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United States

1442

Circuit Court of Appeals

For the Ninth Circuit.

GIUSEPPI CAMPANELLI,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United
States District Court of the Northern District
of California, First Division.

FILED

SEP 12 1925

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

GIUSEPPI CAMPANELLI,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
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Transcript of Record.

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of California, First Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Defendant and Plaintiff in Error:

WILFORD H. TULLY, Esq., Phelan Bldg.,
San Francisco, California.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Fran-
cisco.

In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, First Division.

Before Hon. ROBERT S. BEAN, Judge.

No. 15,828.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. O'HAGAN et al.,
Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD
ON WRIT OF ERROR.

To the Clerk of said Court:

Sir: Please prepare certified transcript on writ
of error of the following pleadings, papers and
orders:

1st. Indictment.

2d. Verdict of jury.

- 3d. Demurrer of Defendant, Guiseppe Campinelli.
- 4th. Motion in arrest of judgment.
- 5th. Motion for new trial.
- 6th. Sentence and judgment.
- 7th. Bill of exceptions as settled by trial Judge.
- 8th. Petition for writ of error.
- 9th. Order allowing writ of error.
- 10th. Assignment of errors.
- 11th. Bond of costs and for appearance.
- 12th. Writ of error.
- 13th. Citation on writ of error.
- 14th. Praeceptum for certified transcript.
- 15th. Stipulation and order omitting original exhibits. [1*]

Dated: April 6th, 1925.

WILFORD H. TULLY,
Attorney for Defendant, Guiseppe Campinelli, and
Plaintiff in Error.

[Endorsed]: Filed Apr. 7, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[2]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

(INDICTMENT.)

At a stated term of said court begun and holden in the City and County of San Francisco within

*Page-number appearing at foot of page of original certified Transcript of Record.

and for the Southern Division of the Northern District of California on the first Monday in November, in the year of our Lord one thousand nine hundred and twenty-four,—

The grand jurors of the United States of America, within and for the Southern Division of the Northern District of California duly impaneled in and for the term of said court, begun and holden on the second Monday in July in the year one thousand nine hundred and twenty-four and duly and regularly continued in session by order of Court made and entered in the premises for the purpose of considering this and other cases, do on their oaths allege, find, charge and present:

I.

That heretofore, to wit, on the 28th day of October, 1919, the Congress of the United States of America passed an Act entitled: "An Act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of highproof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries, the short title of which Act is "National Prohibition Act," and which said Act at all of the times hereinafter mentioned was and now is in full force and effect.

II.

That heretofore, to wit, on the 21st day of September, 1922, the Congress of the United States of America [3] passed an Act entitled: "An Act to Provide Revenue, to regulate commerce with foreign

countries, to encourage the industries of the United States, and for other purposes," the short title of which Act is "Tariff Act of 1922," and which said Act at all of the times hereinafter mentioned was and is now in full force and effect.

III.

That by, under and pursuant to the provisions of said National Prohibition Act, and particularly by Section 3 of Title II thereof, it is provided:

"No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

IV.

That by, under and pursuant to the provisions of said Tariff Act of 1922, and particularly by Section 593, Subdivision (b) thereof, it is provided:

"If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any

sum not exceeding \$5,000 nor less than \$50, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession [4] shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury."

V.

That during all of the times herein mentioned the Farallone Islands were and now are owned and possessed by the United States; that said Farallone Islands are located at a point in the Pacific Ocean approximately due west of the city and county of San Francisco, State of California, United States of America, and at a distance approximately 25 miles from said city and county of San Francisco.

VI.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

That J. O'HAGAN, J. L. DANIEL, W. J. BLACKMORE, CRESENTINO C. A. MASSINO, *alias* J. MOSSINO, ANTONIO D. RILO, *alias* M. LASSELLE, JOSE ABELLON, *alias* F. ABALONE, MANUEL C. GONZALES, *alias* R. GONZALES, RAMIRO BASTERRECHEA REGUEIRO, *alias* R. BASTERRECECHE, J. BERMUDEZ, MANUEL SANCHEZ NOVO, *alias* M. SANCHEZ, AUGUSTUS RODNEY, GUISEPPE MANCARDI, *alias* GUISEPPE BELLONIO,

ROBERT CASTAGNO, PATRICK J. WALSH, GUISEPPE GERBANDO, F. JANOE, H. MIKE CUMMINGS, DANIEL HENDERSON, GUIVAN McMILLAN, J. LEONARD HOLMES, JOHN B. DeMARIA, GUISEPPE COMPANELLI, *alias* JOE CAMPANELLI, RICARDO COMPANELLI and RUTH ADELLE SMITH, *alias* PATRICIA HENDERSON, hereinafter called the defendants, and divers other persons to the grand jury and these grand jurors unknown, did at the Bay of San Francisco, within the District and Division aforesaid and within the jurisdiction of this court, on the 1st day of February, 1924, the real and exact date of which is to this grand jury and these grand jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, wilfully, [5] unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these grand jurors and to this grand jury unknown, to commit certain offenses against the United States, that is to say:

(a) Wilfully, unlawfully, feloniously and knowingly to sell, transport, import, deliver, furnish and possess in the United States intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes in the United States and within the jurisdiction of this court the said Acts to be then and there unlawful and prohibited and contrary to the pro-

visions of the Act of October 28, 1919, known as the "National Prohibition Act" and intended for use for beverage purposes in violation of said Act.

(b) Wilfully, unlawfully, feloniously, knowingly and fraudulently import and bring into the United States and within the jurisdiction of this court, assist in importing and bringing into the United States and within the jurisdiction of this court merchandise contrary to law, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of Section 593, Subdivision (b) of the Tariff Act of 1922 and intended to be imported and brought into the said United States in violation of said Act.

VII.

And the grand jurors aforesaid, on their oaths, [6] aforesaid, do further allege, charge, find and present:

That said conspiracy, combination, confederation and agreement between the said defendants and said divers other persons whose names are as aforesaid to these grand jurors and this grand jury unknown, was continuously throughout all of the time from and after on or about the 1st day of February, 1924, and at all of the times thereafter and herein mentioned and referred to, and particularly at the time and times of the commission and consummation of each and all of the overt acts in this in-

dictment set forth and *up and* including the time of the filing of this indictment in existence and process of execution.

Against the peace and dignity of the United States of America, and contrary to the form of the statutes of the said United States of America in such case made and provided.

VIII.

And the grand jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

That in pursuance of said conspiracy, combination and agreement herein in this indictment set out and to effect and accomplish the object thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof said defendants and each of them:

(a) Did at Havana, Cuba, in the month of July, 1924, cause the steamer "Giulia" to be loaded with about 12000 cases of intoxicating liquor, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum of alcohol by volume and which was then and there fit for use and intended for use for beverage purposes, and did cause said steamer "Giulia" on or about the 7th day of July, 1924, to leave the port of Havana, Cuba, and proceed to a point opposite and within a distance of less than thirty miles from said Farallone Islands for the purpose and with the intent [7] of then and there unloading, selling, delivering, furnishing, transporting and importing and bringing into the United States and within the jurisdiction of this

court said cargo of intoxicating liquor, to wit, whiskey, champagne, wine, gin and beer which was then and there fit for use and intended for use for beverage purposes withing the United States; that from and at said point said defendants did then and there wilfully, unlawfully and fraudulently unload, furnish and deliver from said vessel at said point a portion of said cargo of intoxicating liquors on to and upon motor boats "Nat" and divers other motor boats whose names and masters are to this grand jury and these grand jurors unknown, well knowing that said motor boats operated by their said masters would and did transport, deliver, import and bring into the United States, to wit, in San Francisco Bay and within the jurisdiction of this court said portion of said cargo of intoxicating liquor, to wit, whiskey, champagne, wine, gin and beer, then and there containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes in the United States and which said unloading, furnishing, delivering, transporting and importing and bringing into the United States of said intoxicating liquor by said defendants and on said motor boats as aforesaid, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, Subdivision (b) of Section 593 of the Tariff Act of 1922 and intended for use in violation of said Acts and each of them.

(b) That said defendants and each of them did on September 7, 1924, and while said steamer

“Giulia” was at [8] anchor opposite the said Farallone Islands, possess, load upon, deliver and furnish to the Motor boat “Nat” from said steamer “Giulia” intoxicating liquor, to wit, 300 cases containing 12 bottles each of intoxicating liquor, to wit, whiskey then and there containing one-half of one per centum and more of alcohol by volume which was then and there fit for use and intended for use for beverage purposes in the United States; and that said defendants did thereupon and upon said day cause said intoxicating liquor to be transported, imported and brought into the United States, to wit, into the San Francisco Bay and within the jurisdiction of this court upon and by means of said motor boat “Nat” and that the possession, loading, delivering, furnishing, transporting and bringing into the United States and within the jurisdiction of this court of said intoxicating liquor by said defendants at the time and in the manner aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act and of subdivision (b) of Section 593 of the Tariff Act of 1922, and intended for use for beverage purposes in violation of said acts and each of them.

(c) That said defendants and each of them did between September 8, 1924, and October 8, 1924, and while said steamer “Giulia” was at anchor opposite the said Farallone Islands possess, load upon, deliver and furnish to the motor boat

“Shark” and the motor boat “Nat” from said steamer “Giulia” intoxicating liquor, to wit, 3,000 cases of whiskey, gin, wine, champagne and beer, then and there containing one-half of one per centum and more of alcohol by volume which was then and there fit for use and intended for use for beverage purposes within the United States; and that said defendants and each of them did thereupon and [9] during said time and by means of said motor boat “Shark” and said motor boat “Nat” transport, import and bring into the United States, to wit, into the San Francisco Bay and within the jurisdiction of this court said intoxicating liquor, and that the possession, loading, delivering, furnishing, transporting and bringing into the United States of said intoxicating liquor by said defendants at the time and in the manner aforesaid, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act and of subdivision (b) of Section 593 of the Tariff Act of 1922, and intended for use for beverage purposes in violation of said Acts and each of them.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

STERLING CARR,
United States Attorney.

[Endorsed]: A True Bill. Perry Eyre, Foreman. Presented in Open Court and Ordered Filed Nov. 12, 1924. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [10]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 17th day of November, in the year of our Lord, one thousand nine hundred and twenty-four. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 15,828.

UNITED STATES OF AMERICA

vs.

GIUSEPPE COMPANELLI et al.

MINUTES OF COURT—NOVEMBER 17, 1924
—ARRAIGNMENT.

Defendants Giuseppe Companelli and John B. de Maria were present with attorneys, each arraigned and thereupon, after hearing attorneys for defendants, ordered case continued to Nov. 19, 1924, for entry of said defendants' pleas to indictment.

Vol. 64, page 226. [11]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. O'HAGAN et als.,

Defendants.

DEMURRER OF DEFENDANT GUISEPPE
CAMPANELLI TO INDICTMENT.

Now comes Guiseppe Campanelli, one of the de-
fendants named herein, and demurs to the indict-
ment on file herein and to each of the counts
contained therein, and to the whole thereof, and
for grounds of demurrer alleges:

I.

That each count of the indictment against him
and the matters and things set forth in each of the
several counts in the indictment herein, are not
sufficient in law to compel the said defendant to
answer to the indictment, in that it does not appear
therein nor can it be ascertained therefrom.

(a) Of what crime, if any, the defendant herein
is thereby charged;

(b) What statute of the United States, if any,
the defendant herein has violated;

(c) Whether the above-named defendant at any

time, or at all, possessed, in the United States, intoxicating liquor for beverage purposes;

(d) Whether the above-named defendant willfully, unlawfully, feloniously, knowingly and fraudulently, import and bring into the United States and within the jurisdiction of this Court, certain merchandise contrary to law, as alleged [12] in subdivision "b" of paragraph VI of said indictment or whether he assisted in importing and *bring* into the United States and within the jurisdiction of the United States, merchandise contrary to law as alleged therein.

(e) Whether the said motor boats described in subdivision "a" of paragraph VIII of said indictment, actually did transport, deliver, import and bring into the United States, to wit, San Francisco Bay, and within the jurisdiction of this Court said portion of said cargo of intoxicating liquor;

(f) How, or in what manner, the above-named defendant, Guiseppe Campanelli, did conspire, combine, confederate and agree together with others to perform the alleged unlawful acts.

II.

The facts stated in the indictment do not constitute an offense under the laws of the United States.

III.

That there is no sufficient showing in the said indictment of unlawful means used by the above-named defendant, Guiseppe Campanelli, in the carrying out of the said alleged conspiracy.

IV.

That the said indictment, for the reasons hereinbefore alleged and specified is insufficient to enable the said defendant, Guiseppe Campanelli to make his defense or to properly inform him of the charge against him, or to enable one of common understanding to know and understand the nature of the charges against him.

V.

That the said indictment is not sufficient in form of substance to enable the above-named defendant Guiseppe Campanelli, to plead any judgment thereon, in bar of other prosecution for the same offense. [13]

VI.

These things so above set forth, the above-named defendant is ready to verify.

WHEREFORE, the above-named defendant prays that the foregoing demurrer be sustained, and that he may be discharged of the said indictment.

NATHAN C. COGHLAN,
CLAY A. PEDRAZZINI,

Attorneys for Defendant, Guiseppe Campanelli.

[Endorsed]: Filed Nov. 26, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 26th day of November, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 15,828.

UNITED STATES OF AMERICA

vs.

JOSE ABELLON, *alias* F. ABALONE et al.

MINUTES OF COURT—NOVEMBER 26, 1924—
PLEA.

On motion of P. A. Vincilione, Esq., attorney for defendant Jose Abellon, *alias* F. Abalone, and certain other defendants, ordered that the Clerk of this court furnish Mr. Vincilione with a copy of indictment herein at expense of the United States.

This case came on regularly for entry of plea of defendant Guiseppe Campanelli, who was present with attorney, Clay Pedrazzini, Esq. Mr. Pedrazzini presented demurrer to indictment, which demurrer the Court overruled. Mr. Pedrazzini then moved the Court for order granting permission to present and file plea in abatement, which motion the Court ordered denied. Mr. Pedrazzini entered exceptions to said orders. Said defendant

Guiseppe Campanelli thereupon plead "Not Guilty" to indictment filed herein.

This case also came on regularly for entry of plea of defendant John B. De Maria, who was present with attorney, Jas. R. Kelly, Esq. Mr. Kelly presented demurrer to indictment, which demurrer the Court overruled. Mr. Kelly then moved the Court for order granting permission to present and file plea in abatement which motion the Court ordered [15] denied. Mr. Kelly entered exceptions to said orders. Mr. Kelly presented and filed motion to quash indictment, which the Court ordered denied and to which order Mr. Kelly entered exception.

Said defendant John B. De Maria thereupon plead "Not Guilty" to indictment.

Ordered case continued to Nov. 28, 1924, to be set for trial.

Vol. 64, page 263. [16]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 2d day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 2, 1925—
TRIAL.

This case came on regularly this day for trial. Defendants were present with respective attorneys, viz: Guiseppe Campanelli with W. H. Tully, Esq., J. O. O'Hagan in custody of U. S. Marshal and with J. E. Connolly, Esq., Robert Castagno and Cresentino C. A. Massino in custody of U. S. Marshal and with J. Pardini, Esq., Jose Abellon, J. Bermudez, W. J. Blackmore, J. L. Daniell, Manuel C. Gonzales, Guiseppe Mancardi, Manuel Sanchez Novo, Ramiro Basterrechea Regueiro, Antonio D. Rilo and Augustus Rodney in custody of U. S. Marshal and with P. A. Vincilione, Esq., and John B. De Maria with John T. Williams, Jas. R. Kelly and J. F. McDonald, Esqs.

K. C. Gillis, Esq., Asst. U. S. Atty., was present for and on behalf of United States.

Upon calling of case, all parties answering ready for trial, Court ordered same proceed and that the jury-box be filled from regular panel of trial jurors of this court. Accordingly, the hereinafter named persons, having been duly drawn by lot,

sworn, examined and accepted, were duly [17]
sworn as jurors to try the issues herein, viz.:

Chas. W. Dahl,	J. J. Haviside,
Albert L. Hart,	Chas. E. Nosler,
Albert J. Chapman,	Guy B. Kibbe,
Brace Carter,	Herman M. Heim,
Sidney M. Hauptman,	Thos. P. Hartland,
Clarence W. Whitney,	Ruben Overfield.

Thereupon Mr. Gillis made statement to the Court and jury as to the nature of the case.

Counsel for defendants moved Court for order dismissing indictment herein. After hearing attorneys for respective parties, ordered motion denied and to which order an exception was entered.

Mr. Gillis then called certain persons as witnesses on behalf of United States, each of whom was duly sworn and examined, to wit: G. L. Lee, Dr. Geo. M. MacNevin, Mrs. W. B. Cohen and H. S. Creighton; and introduced in evidence on behalf of United States certain exhibits which were filed and marked U. S. Exhibits Nos. 1, 2, 3, 4, 5.

At request of Mr. Williams, statement of John O'Hagan was filed and marked for identification as Defendants' Exhibit "A" for Identification.

Jury having been admonished, Court ordered further trial continued to March 3, 1925, at 10:30 A. M. [18]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 3d day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 3, 1925—
TRIAL (CONTINUED).

This case came on regularly this day for further trial. Defendants were present with their respective attorneys, viz: Guiseppe Campanelli with W. H. Tully, Esq., J. O'Hagan in custody of U. S. Marshal and with J. E. Connolly, Esq., Robert Castagno and Crescentino C. A. Massino in custody of U. S. Marshal and with J. Pardini, Esq., Jose Abellon, J. Bermudez, W. J. Blackmore, J. L. Daniell, Manuel C. Gonzales, Guiseppe Mancardi, Manuel Sanchez Novo, Ramiro Basterrechea Regueiro, Antonio D. Rilo and Augustus Rodney in custody of U. S. Marshal and with P. A. Vincil-

ione, Esq., and John B. De Maria with John T. Williams, Jas. R. Kelly and J. F. McDonald, Esqs.

K. C. Gillis, Esq., Asst. U. S. Atty., was present for and on behalf of United States. Jury was present and complete.

W. A. Newcombe was sworn and examined for United States. H. S. Creighton was recalled for United States. Mr. Gillis then called certain persons as witnesses for United States, each of whom was duly sworn and examined, to wit: Frank H. Rivers, Lawrence A. Hanson, Ignacio Alioto, Pablo Herman, [19] M. G. Sturtevant, S. J. Thompson; and introduced in evidence on behalf of United States certain exhibits which were filed and marked U. S. Exhibits Nos. 6 and 7.

Counsel for defendants presented and filed for identification, on behalf of defendants, certain exhibits which were filed and marked Defendants' Exhibits "B," "C" and "D."

Hour of adjournment having arrived, ordered further trial continued to March 4, 1925, at 10:30 A. M. [20]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 4th day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 4, 1925—
TRIAL (CONTINUED).

This case came on regularly this day for further trial. Defendants were present with respective attorneys, viz.: Guiseppe Companelli with W. H. Tully, Esq., J. O'Hagan in custody of U. S. Marshal and with J. E. Connolly, Esq., Robert Castagno and Crescentino C. A. Massino in custody of U. S. Marshal and with J. Pardini, Esq., Jose Abellon, J. Bermudez, W. J. Blackmore, J. L. Daniell, Manuel C. Gonzales, Guiseppe Mancardi, Manuel Sanchez Novo, Ramiro Bastenechea Regueiro, Antonio D. Rilo and Augustus Rodney in custody of U. S. Marshal and with P. A. Vincilione, Esq.,

and John B. De Maria with John T. Williams, Jas. R. Kelly and J. F. McDonald, Esqs.

K. C. Gillis, Esq., Asst. U. S. Atty., was present for and on behalf of United States.

The jury heretofore impaneled and sworn to try defendants was present and complete.

Certain persons were called as witnesses for United States, each sworn and examined, to wit: Salvadore Alioto, who was examined thru Interpreter Paul De Martini who was [21] duly sworn as such, Frank Landl, George W. Beer-maker, John Richardson, B. W. Grable, John L. Benson, Alf Oftedahl, P. Campania, H. F. Duff and Chris Runkle. Witness S. J. Thompson was recalled and further examined.

Certain exhibits were introduced in evidence on behalf of United States, filed and marked U. S. Exhibits Nos. 8, 9 and 10; and rested case of United States.

After hearing Mr. Gillis, ordered that the U. S. Exhibits heretofore introduced and filed herein as U. S. Exhibits Nos. 5 and 6 be withdrawn from case and files, and accordingly same were returned to Mr. Gillis in open court.

Counsel for defendants made a motion for order instructing jury to return verdict of not guilty, and after hearing attorneys, Court reserved its ruling upon said motion until close of testimony.

After hearing attorneys, ordered further trial continued to March 5, 1925, at 10 A. M. [22]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 5th day of March in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 5, 1925—
TRIAL (CONTINUED).

This case came on regularly this day for further trial. Defendants were present with respective attorneys, viz.: Guiseppe Campanelli with W. H. Tully, Esq., J. O'Hagan in custody of the U. S. Marshal and with J. E. Connolly, Esq., Robert Castagno and Crescentino C. A. Massino in custody of U. S. Marshal and with J. Pardini, Esq., Jose Abellon, J. Bermudez, W. J. Blackmore, J. L. Daniell, Manuel C. Gonzales, Guiseppe Mancardi, Manuel Sanchez Novo, Ramiro Basterrechea Regueiro, Antonio D. Rilo and Augustus Rodney in custody of U. S. Marshal and with P. A. Vin-

cilione, Esq., and John B. De Maria with John T. Williams, Jas. R. Kelly and J. F. McDonald, Esqs.

K. C. Gillis., Esq., Asst. U. S. Atty, was present for and on behalf of United States.

Jury heretofore impaneled and sworn to try defendants was present and complete.

Mr. Tully called Joseph Lippi and G. Bracini as witnesses on behalf of defendants, each of whom was duly sworn and examined, and recalled H. S. Creighton as witness [23] for defendants. Mr. Connolly called defendant John O'Hagan, who was duly sworn and examined as witness for defendants.

Certain exhibits were introduced in evidence on behalf of defendants, filed and marked Defendants' Exhibits Nos. "E," "F" and "G."

Counsel for defendants thereupon rested case on behalf of each defendant.

Mr. Gillis then recalled, on behalf of United States in rebuttal, H. S. Creighton and then called J. H. Morris and G. G. Kenny as witnesses on behalf of United States, each of whom was duly sworn and examined.

Thereupon Court ordered further trial continued to March 6, 1925, at 10 A. M. [24]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 6th day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 6, 1925—
TRIAL (CONTINUED).

This case came on regularly this day for further trial. Defendants were present with respective attorneys, viz.: Guiseppe Companelli with W. H. Tully, Esq., J. O'Hagan in custody of U. S. Marshal and with J. E. Connolly, Esq., Robert Castagno and Cresentino C. A. Massino in custody of U. S. Marshal and with J. Pardini, Esq., Jose Abellon, J. Bermudez, W. J. Blackmore, J. L. Daniell, Manuel C. Gonzales, Guiseppe Mancardi, Manuel Sanchez Novo, Ramiro Basterrechea Regueiro, Antonio D. Rilo and Augustus Rodney in custody of U. S. Marshal and with P. A. Vincilione, Esq.,

and John B. De Maria with John T. Williams, Jas. R. Kelly and J. F. McDonald, Esqs.

K. C. Gillis, Esq., Asst. U. S. Atty., was present for and on behalf of United States.

Jury heretofore impaneled and sworn to try defendants was present and complete.

Case was argued by Mr. Gillis, Mr. Vincilione, Mr. Pardini, Mr. Connolly, Mr. Tully and Mr. Gillis.

Hour of adjournment having arrived, ordered further trial continued to March 7, 1925, at 10 A. M.
[25]



At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 7th day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 7, 1925—
TRIAL (CONTINUED).

This case came on regularly this day for further trial. Defendants were present with respective attorneys, viz.: Guiseppe Companelli with W. H. Tully, Esq., J. O'Hagan in custody of U. S. Marshal and with J. E. Connolly, Esq., Robert Castagno and Cresentino C. A. Massino in custody of U. S. Marshal and with J. Pardini, Esq., Jose Abellon, J. Bermudez, W. J. Blackmore, J. L. Daniell, Manuel C. Gonzales, Guiseppe Mancardi, Manuel Sanchez Novo, Ramiro Basterrechea Regueiro, Antonio D. Rilo and Augustus Rodney in custody of U. S. Marshal and with P. A. Vincilione, Esq., and John B. De Maria with John T. Williams, Jas. R. Kelly and J. F. McDonald, Esqs.

K. C. Gillis, Esq., Asst. U. S. Atty., was present for and on behalf of United States.

Jury heretofore impaneled and sworn to try defendants was present and complete.

Court proceeded to instruct jury, who, after being so instructed, retired at 10:50 A. M., to deliberate upon a verdict. During deliberation of jury, ordered that the [26] U. S. Marshal furnish jury and two bailiffs with lunch, at expense of United States. Jury returned into court at 4 P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present, and, in answer to question of the Court, stated they had agreed upon a verdict and presented written verdict, which the Court ordered filed and recorded,

viz: "We, the Jury, find as to the defendants at the bar as follows:

Jose Abellon	Not Guilty.
J. Bermudez	Not Guilty.
W. J. Blackmore	Not Guilty.
Robert Castagno	Not Guilty.
Guiseppe Campanelli	Guilty.
J. L. Daniell	Not Guilty.
John B. De Maria	Not Guilty.
Manuel C. Gonzales	Not Guilty.
J. O'Hagan	Guilty—Leniency Recommended.
Guiseppe Mancardi	Not Guilty.
Cresentino C. A. Massino	Not Guilty.
Manuel Sanchez Novo	Not Guilty.
Ramiro Basterrechea Regueiro	Not Guilty.
Antonio D. Rilo	Not Guilty.
Augustus Rodney	Not Guilty.

BRACE CARTER,
Foreman."

After hearing attorneys, ordered judgments as to defendants J. O'Hagan and Guiseppe Campanelli be continued to March 10, 1925.

After hearing attorneys, further ordered that defendant Guiseppe Campanelli, in default of new bond in sum of \$5,000.00, stand committed and that *mittimus* issue.

Ordered that defendants Jose Abellon, J. Bermudez, W. J. Blackmore, Robert Castagno, J. L. Daniell, John B. De Maria, Manuel C. Gonzales, Guiseppe Mancardi, Cresentino C. A. Massino, Manuel Sanchez Novo, Ramiro Basterrechea Regueiro, Antonio D. Rilo and Augustus Rodney be

and they are hereby discharged and go hence without day, and that the bonds heretofore given for their appearance herein be and same are hereby exonerated.

Ordered jurors discharged from further consideration of case. [27]

In the Southern Division of the United States for
the Northern District of California.

No. 15,828.

THE UNITED STATES OF AMERICA

vs.

JOSE ABELLON et al.

VERDICT.

We, the Jury, find as to the defendants at the bar
as follows:

Jose Abellon	Not Guilty.
J. Bermudez	Not Guilty.
W. J. Blackmore	Not Guilty.
Robert Castagno	Not Guilty.
Guiseppe Campanelli	Guilty.
J. L. Daniell	Not Guilty.
John De Maria	Not Guilty.
Manuel C. Gonzales	Not Guilty.
J. O'Hagan	Guilty—Leniency Recommended.
Guiseppe Mancardi	Not Guilty.
Cresentino C. A. Massino	Not Guilty.
Manuel Sanchez Novo	Not Guilty.
Ramiro Basterrechea Regueiro	Not Guilty.

Antonio D. Rilo Not Guilty.
Augustus Rodney Not Guilty.

BRACE CARTER,
Foreman.

[Endorsed]: Filed March 7th, 1925, at 4 o'clock
P. M. W. B. Maling, Clerk. By Lyle S. Morris,
Deputy. [28]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, First Division.

No. 15,828.

UNITED STATES OF AMERICA,
Complainant,
vs.
J. O'HAGAN et al.,
Defendants.

MOTION FOR ORDER VACATING VERDICT
OF JURY AND GRANTING NEW TRIAL.

The defendant Guiseppe Companelli hereby
moves this Honorable Court for an order vacating
the verdict of the jury herein, and granting to the
said defendant a new trial for the following causes,
and each of them, materially affecting the consti-
tutional rights of the said defendant:

I.

Said verdict was contrary to the evidence ad-
duced upon the trial hereof.

II.

Said evidence was insufficient to justify said verdict.

III.

Said verdict was contrary to law.

IV.

That the Court erred in his instructions to the jury, in refusing the defendant's instructions and in deciding questions of law arising during the course of the trial hereof, which errors were duly excepted to.

This motion is made upon the minutes of the court, and all other records and proceedings in the above-entitled cause.

Dated: San Francisco, California, March 10th, 1925. [29]

WILFORD H. TULLY,

Attorney for Defendant, Guiseppe Campanelli.

[Endorsed]: Filed Mar. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [30]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Complainant,

vs.

J. O'HAGAN et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT.

Now comes Guiseppe Companelli one of the defendants in the above-entitled cause, and respectfully moves the Court to arrest and withhold judgment of the above-entitled cause, and that the verdict of conviction of said defendant heretofore given and made in said cause be vacated and set aside and declared to be null and void, and of no force, virtue or effect for each of the following causes and reasons:

I.

It appears upon the face of the record herein that no judgment can be legally entered against the said defendant for the following reasons, to wit:

(1) The facts stated in the indictment on file herein, and upon which said conviction was and is based, do not constitute a crime or public offense within the jurisdiction of this court.

(2) That said indictment does not state facts sufficient to charge the said defendant with any crime or offense against the United States.

(3) The said indictment does not state facts sufficient to charge the said defendant with having conspired to commit any crime or offense against the said United States. [31]

(4) That the said indictment does not state facts sufficient to charge the said defendant with any crime against the United States in this, to wit, that all and singular the matters, things and acts which the said indictment alleges that said defendant conspired to do are not nor is any of said

matters, things or acts a crime under any law or statute of the United States of America.

II.

That this Honorable Court has no jurisdiction to pass judgment upon said defendant by reasons of the fact that the said indictment failed to charge said defendant with any crime against the United States; and, further, that this Honorable Court has no jurisdiction to pass judgment upon the said defendant by reason of the fact that the testimony introduced in the trial of said cause showed or tended to show that a crime, if any, had been committed outside of the Northern District of the State of California, and in a foreign jurisdiction.

WHEREFORE, by reason of the premises the said defendant prays of this Honorable Court that judgment herein be arrested and withheld, and that the conviction of said defendant be declared null and void.

Dated: March 10th, 1925.

WILFORD H. TULLY,

Attorney for said Guiseppe Campanelli.

[Endorsed]: Filed Mar. 10, 1925. Walter B. Maling, Clerk. C. W. Calbreath, Deputy Clerk.

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 10th day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable ROBERT S. BEAN, District Judge for the District of Oregon, designated to hold and holding this court.

No. 15,828.

UNITED STATES OF AMERICA

vs.

J. O'HAGAN et al.

MINUTES OF COURT—MARCH 10, 1925—
JUDGMENT.

This case came on regularly this day for pronouncing of judgment as to defendant J. O'Hagan, who was present in custody of U. S. Marshal and with his Attorney, J. E. Connolly, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of United States. After hearing attorneys, ordered that defendant J. O'Hagan be imprisoned for period of ten and one-half months (10½) in the County Jail, County of San Francisco, State of California, and that defendant stand committed to custody of U. S. Marshal to execute said judgment of imprisonment, and that a Commitment Issue.

This case also came on regularly this day for pronouncing judgment as to defendant Guiseppe Companelli, who was present with Attorney, W. H. Tully, Esq. Mr. Tully made a motion for new trial, which motion the Court ordered denied. Mr. Tully then made a motion in arrest of judgment, which motion the Court likewise ordered denied. After hearing Mr. Tully and Mr. Fink, ordered that defendant Guiseppe Companelli be imprisoned for period of two (2) years in the [33] United States Penitentiary at Leavenworth, Kansas, and that defendant pay fine of Five Hundred (\$500.00) Dollars or, in default of fine, defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law. Ordered that said defendant stand committed to custody of U. S. Marshal for this District to execute said judgment, and that a Commitment issue. [34]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,828.

THE UNITED STATES OF AMERICA

vs.

GUISEPPE COMPANELLI.

JUDGMENT ON VERDICT OF GUILTY.

Conv. Viol. Section 37 C. C. U. S. (Cons. to Viol. National Prohibition Act.)

Kenneth C. Gillis, Esq., Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the Indictment filed on the 12th day of November, 1924, charging him with the crime of violation of Section 37 C. C. U. S. (Cons. to violate National Prohibition Act); of his arraignment and plea of Not Guilty; of his trial and the verdict of the Jury on the 7th day of March, 1925, to wit:

“We, the Jury find as to the defendants at the bar as follows:

Jose Abellon	Not Guilty
J. Bermudez	Not Guilty
W. J. Blackmore	Not Guilty
Robert Castagno	Not Guilty
Guisepe Companelli	Guilty
J. L. Daniell	Not Guilty
John B. DeMaria	Not Guilty
Manuel C. Gonzales	Not Guilty
J. O'Hagan	Guilty—Leniency recommended.
Guisepe Mancardi	Not Guilty
Cresentino C. A. Massino	Not Guilty
Manuel Sanchez Novo	Not Guilty
Ramiro Basterrechea Regueiro	Not Guilty

Antonio D. RiloNot Guilty
 Augustus RodneyNot Guilty

[35]

BRACE CARTER,
 Foreman.”

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment;

THAT, WHEREAS, the said Guiseppe Campanelli having been duly convicted in this court of the crime of violating Section 37 C. C. U. S. (Cons. to violate National Prohibition Act),

IT IS THEREFORE ORDERED AND ADJUDGED that the said Guiseppe Campanelli be imprisoned for the period of two (2) years in the United States Penitentiary at Levenworth, Kansas, and pay a fine in the sum of Five Hundred (\$500.00) Dollars; further ordered that in default of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

Judgment entered this 10th day of March, A. D. 1925.

WALTER B. MALING,
 Clerk.

By C. W. Calbreath,
 Deputy Clerk.

Entered in Vol. 18, Judg. and Decrees, at page 317. [36]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before Hon. ROBERT S. BEAN, Judge.

No. 15,828.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. O'HAGAN et al.,

Defendants.

BILL OF EXCEPTIONS OF DEFENDANT
GUISEPPE CAMPANELLI.

The above-entitled cause came on for trial March 2, 1925, at the hour of 10 o'clock A. M. at the City and County of San Francisco, State of California. Kenneth C. Gillis, Esq., Assistant United States Attorney, appearing for plaintiff; Messrs. Williams, Kelly & McDonald appearing for defendant John D. Maria; Wilford H. Tully, Esq., appearing for the defendant G. Campanelli; Joseph Connolly, Esq., appearing for the defendant J. O'Hagan; P. A. Vincilione, Esq., appearing for the Crew; and Julian A. Pardini, Esq., appearing for Mossiano Crescentino and Roberto Castagno; and a jury having been empanelled and sworn to try the case, thereafter the following proceedings were had, testimony taken, and evidence, oral and documentary, was introduced on behalf of the United States, as follows:

OPENING STATEMENT FOR THE UNITED STATES.

Mr. GILLIS.—May it please the Court and you, Gentlemen of the Jury: I will briefly outline to you the facts that the Government expects to show from the witnesses who will take the witness stand, to establish the case of the Government against these individuals. To begin with, there are thirteen individuals, the [37] captain and members of the crew of the steamer “Giulia,” which was sunk out somewhere on the Pacific Ocean, defendants in this case; there are two other defendants who have been apprehended and who are before the Court, Mr. De Maria and Mr. Campanelli, who are also the two other defendants who have been apprehended. There are a number of other defendants named in the indictment but the Government, up to the present time, has been unable to apprehend the several other defendants therein named.

The Government will show that in the fall of 1923, and the spring of 1924, two of the defendants who were not apprehended here, a man by the name of Henderson, and a man by the name of McMillan, came to San Francisco and entered into the Colombo Bullion Mines Co. office, ostensibly to take an interest, and, as a matter of fact, did have an interest in that mine that had its office here, but in their operations ran booze-runner ships; that in February or April of 1924 there was seized from one of the wharves here in San Francisco a small boat by the name of “May Heyman,” which we will

directly connect up with these two individuals, and there was something like 1,700 cases of beer that was taken from that boat; the boat was seized and confiscated by the Government at that time. That during the spring months of 1924 Mr. Henderson and Mr. McMillan, and Campanelli and De Maria—Campanelli and De Maria, keep in mind, are the two defendants who are before you—with the captain and crew of the “Giulia,” entered into negotiations with a shipbuilding concern in Los Angeles, in which they purchased a vessel then known as the “Frontiersman,” which was a style of yacht, and in Los Angeles and San Francisco secured a crew for this boat; that at the time Mr. Campanelli and Mr. McMillan were the two particular individuals who were doing the active part, so far as the actual purchase of this boat from the Los Angeles concern is concerned; and that as soon as they had the boat repaired and outfitted with their captain and crew, they sent her down to Havana, Cuba, Mr. De Maria, Mr. Campanelli, [38] and Mr. Henderson going by train and then by boat over to Havana; that in Havana, Cuba, the boat was loaded up with several thousand cases of liquor, that that cargo consisted entirely of liquor consigned, I believe, to Vancouver, with the privilege of making delivery of this cargo on the high seas outside of the twelve-mile limit, as recognized by the treaty between Great Britain and the United States. This ship, however, was sailing under the Panaman flag; that this boat came from Havana, Cuba, and after she had arrived outside of the Golden Gate and was stationed there for

some little time, and during that time she unloaded approximately 2,000 or 3,000 or 4,000 cases of liquor into the United States. We will show the unloading of this liquor by boats that actually came in contact with her, by men who actually went out in small boats and took the liquor from the "Frontiersman," whose name was later changed to the name of "Giulia." We have been simply calling her "Julia," because it is so easy to pronounce it. That there was also a boat which took coal out to this "Giulia" while she was out on this first trip. This coal, as a matter of fact, was delivered to the "Giulia" within almost a stone's throw of a part of the coast here, near San Francisco; that the "Giulia" then ran out of coal, or very nearly ran out of coal, and she was compelled to go back to some neutral, some foreign port, in order to re-fuel herself; that she went from her station outside the 12-mile limit of San Francisco Bay and went back to Ensenada, Mexico, and there Mr. Campanelli and Mr. De Maria, both of whom are before you, gentlemen, arranged for re-coaling of this boat, and that the boat was coaled, re-coaled under their supervision, with coal that they actually purchased; that after being re-coaled she again came up to San Francisco and lay outside of the Heads, here, for quite a considerable period of time, and later ran out of coal again, a storm blew up, and they were blown off their course, and the boat was [39] finally scuttled, and the crew were brought into San Francisco and delivered over to the Customs and Immigration Officers.

I think that covers practically the entire situation, the entire transaction that the Government expects to prove.

We are not charging in this indictment a direct violation of the Prohibition Act, or of the Customs Act, but we are charging a conspiracy to violate those acts. And when we have done all of those things, gentlemen, we will expect a verdict at your hands.

Upon the suggestion of counsel the Court made an order that any objection made by one counsel would be deemed to be made on behalf of all the defendants, and an exception would be deemed to be taken to each and every ruling without orally reserving the same.

Thereafter the defendants made the following motions which were overruled and the rulings duly excepted to:

Mr. WILLIAMS.—We have a couple of motions here that go to the question of jurisdiction, and then there is a matter that I would like to submit to the Court, while the court is still in session, and which, I believe, should not be taken up before the jury. I can state very briefly that this last matter relates to certain statements that may have been given, or that we understand have been given after the termination of the conspiracy, and I believe that those statements are to be used to refresh the memory of certain witnesses, and I think there should be a deletion of certain matter, and should like to present that matter to the Court. . . .

The COURT.—That question can be raised during the trial.

Mr. WILLIAMS.—At this time, if your Honor please, I would like to move the Court for an order dismissing this particular action, and I make this motion on behalf of and upon the request of all the other counsel, although my firm, Williams, Kelly & McDonald, represent but Mr. De Maria, one of the defendants; that is the only defendant that we represent; but we do move to dismiss this indictment [40] and object to proceeding with this trial upon two grounds, that we deem good.

The indictment, upon its face, states that this grand jury was empanelled for the term beginning the first Monday in July of last year, which term ends on October 31, 1924. There is a recital in the indictment that the grand jury was continued thereafter, and continued in session, but there is no recital in that indictment that the grand jury was continued to a date after November 12, the date on which this grand jury manifestly filed the indictment; in other words, the indictment was filed 12 days after the expiration of the term. We take it that as a matter of pleading, so that this Court might have jurisdiction, that the indictment must contain the exception, to wit, that this matter was continued before the grand jury to a time over and beyond the date of the expiration of the July term, to wit, October 31. There is a general allegation of a continuance, but it does not appear, and under the decisions, exceptions of this kind, which are away from the general rule of procedure, must be

pleaded, in order that it shall appear upon the face of the proceeding that the Court has jurisdiction.

We ask a ruling of the Court on that.

The COURT.—Is that the only motion?

Mr. WILLIAMS.—Yes, on that point.

The COURT.—Have you got any other point?

Mr. WILLIAMS.—The other is this: The decisions recite that it must appear affirmatively upon the face of the indictment that the members of the grand jury were sworn before they proceeded to determine what was pending before them. There is a statement in this particular indictment that the grand jury was duly empaneled. The allegation is not tantamount to stating that the grand jury was duly sworn, any more than would have been a statement of the grand jury that it had duly found said indictment, or duly returned said [41] indictment.

Upon these two grounds I at this time move the Court for an order dismissing the indictment, upon the ground that the Court has no jurisdiction over the subject matter of the offense charged, or of the defendants, because it was not an indictment found by a grand jury within the term for which they were summoned, and second, because it does not show on the face of the indictment that the grand jury was duly sworn. . . .

Mr. TULLY.—Might I, on behalf of Mr. Campanelli, join in the same motion? . . .

The COURT.—The Court is of opinion that neither of these points is well taken. In the first place, the presumption is that the grand jury were

regularly in session. I suppose the Court records show it was continued. I do not understand that the law requires that an indictment shall show on its fact that the grand jury was sworn. That is a matter that is attended to when a grand jury is empaneled. . . .

Mr. WILLIAMS.—I want to note an exception to your Honor's ruling. That applies to both motions?

The COURT.—Yes. You already have it in the record on your motion to quash. . . .

TESTIMONY OF G. L. LEE, CALLED FOR THE UNITED STATES.

G. L. LEE, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a prohibition agent employed since February 5, 1924, by the United States Government.

Mr. GILLIS.—Q. Did you have occasion to visit pier 16 in this city on April 10 of 1924?

A. I did.

Q. Just where is that located?

A. It is at the end of 16th Street.

Q. This city?

A. It is what is called the 16th street pier. [42]

Q. That is in this city? A. Yes.

Q. Did you see the boat "Mae Heyman" at that time? A. I did.

Q. Just state what happened at that particular time?

A. About 9 P. M. of April 10 I received a tele-

(Testimony of G. L. Lee.)

phone call from Agent Campelong that there was something doing down at the pier. We walked down on the pier until we got nearly to the outer end and we paused behind a pile of lumber and we could hear the clicking of bottles; we waited there a few minutes and about 10:30 we went out and demanded that they throw up their hands; some of the men were on the boat and some on the pier.

Q. What boat was that?

A. The "Mae Heyman"; and we afterwards counted the sacks which numbered 119, that had already been taken out of hold No. 1.

Q. Out of the hold of the boat onto the pier?

A. From the hold of the boat onto the pier. They were removing them while we were standing behind the pile of lumber.

Q. You made a seizure, then, at that time?

A. We seized the boat and the liquor, and arrested the men.

Q. How much liquor? A. 1,705 cases.

Mr. WILLIAMS.—The pleading is very general in scope, and the testimony here relates to a boat called the "Mae Heyman," and as this evidence comes in at this particular time we desire at this time to move to strike it out, because it does not appear that it is relevant to this conspiracy in any possible manner.

The COURT.—Of course, the Government cannot develop its case at one time.

Mr. WILLIAMS.—I know that. I know your Honor will rule against me, but I want to take an

(Testimony of G. L. Lee.)

exception to your Honor's ruling and then can I reserve a motion to strike it out?

The COURT.—Yes, unless the Government connects it up with these defendants. [43]

Mr. WILLIAMS.—I ask for an exception and the privilege of renewing the motion later on.

Mr. TULLY.—May that go as to all the defendants?

Mr. GILLIS.—Q. There were how many sacks seized? A. 1,705.

Q. How was the liquor packed?

A. It was in pint bottles with a wrapper, a heavy wrapper around it and then in regular sacks, sewed tight on the end, just like smuggled Scotch would come in, the same way.

Q. And was the "Mae Heyman" seized at that time? A. It was.

Mr. WILLIAMS.—We renew our motion, if your Honor please.

The COURT.—It will be overruled.

Mr. WILLIAMS.—Exception. . . .

The COURT.—What did you say in answer to his question?

A. I did not arrest any of these defendants.

Q. None of these defendants?

A. No. . . .

Mr. VINCILIONE.—I ask on behalf of the crew that the evidence of the last witness be stricken out as being hearsay, not being connected with any of the defendants represented here.

The COURT.—As I stated a moment ago, the

(Testimony of George Michael MacNevin.)

Government cannot put on its case at one time. The motion will be denied. . . .

Upon cross-examination the witness testified as follows:

All the material taken off the boat was beer. I did not take into custody any of the defendants in this case. None of these defendants were there.

[44]

TESTIMONY OF GEORGE MICHAEL MacNEVIN, CALLED FOR THE UNITED STATES.

GEORGE MICHAEL MacNEVIN, a witness called on behalf of the United States, being first duly sworn testified as follows:

My profession is that of a dentist.

Mr. GILLIS.—In the spring of 1923 did you become acquainted with a man by the name of Daniel Henderson? A. Yes, I did.

Q. And a man by the name of Guyvan McMillan?

A. Yes, I did.

Q. Where was it that you became acquainted with them?

A. In the office of the Colombo Mining Co.

. . . .

Q. Did you see them quite frequently from that time up to March, 1924?

A. I saw them, yes, most every few days; I had occasion to go into the office in the morning to see what they were doing in regard to the mine; some

(Testimony of George Michael MacNevin.)

days I would see Mr. Henderson, but Mr. McMillan was there most all of the time; he seemed to be the secretary, or acting as secretary for Mr. Henderson.

Q. At any of the times that you saw Mr. McMillan, or Mr. Henderson, did you have any conversation with either of them with reference to the smuggling of liquor into this country by either of those individuals?

Mr. WILLIAMS.—Just a moment; I just want to preserve my record on behalf of the defendant De Maria. I object to the testimony as immaterial, irrelevant and incompetent, hearsay, and there is no foundation laid at this time as to the connection of the defendant De Maria with any conspiracy.

The COURT.—I will overrule it.

Mr. WILLIAMS.—Note an exception.

Mr. TULLY.—I make the same objection on behalf of the defendant Campanelli.

The COURT.—I do not think it is necessary to take up the time of the Court in making motions of this kind, because, as I [45] said, if this evidence is not connected up it will be withdrawn from the jury.

Mr. WILLIAMS.—May we have that order?

. . . .

Mr. TULLY.—May I make the further objection that any declarations made by a co-conspirator are inadmissible at this time because the conspiracy is not proven, and I wish to reserve an exception.

. . . .

(Testimony of George Michael MacNevin.)

Q. Was there anything in any of the conversation said about the ship "Ardenza"? A. Yes.

Q. What was that?

A. Well, I originally started with a man named Manning, who came in and was to put in a certain amount of money into the mining venture. After about a month and a half he brought in Mr. Henderson and Mr. Stevens, and represented them to me as being English capitalists with a world of money, both multimillionaires, and wanted to know if I had any objection to their putting some money in, in his interest, that he was not able to carry the whole interest on himself; so I said I had no objection at all. At that time I met Mr. Stevens, who was supposed to be the owner of the "Ardenza," which came out in the papers later was his ship.

Q. Anything said about the ownership of the cargo of liquor that was aboard the "Ardenza"?

A. Mr. Henderson claimed he owned the cargo.

Q. Did he state where the boat "Ardenza" was at that time? A. Yes.

Q. Where? A. Right outside of the Heads, here.

Q. That is, outside of San Francisco?

A. Yes, right off the Bay.

Q. Did you ever hear or see anything about a black book that Henderson had?

Mr. TULLY.—We object to this line of questioning, your Honor, and also suggest that we cannot see any materiality of it with [46] reference to

(Testimony of George Michael MacNevin.)

the particular case here, nothing said that involves any of these other defendants who are on trial. This is bringing in matter we know nothing at all about.

The COURT.—He can answer the question. The objection is overruled.

Mr. TULLY.—Exception.

A. I saw a black book there at one time, and when I wanted him to vacate the office, or give up the other office, he told me that that represented so many thousand cases of whiskey, and he had it there as coal. I said, "What are you doing with so many tons of coal at the mine? We do not use only a little bit of blacksmithing coal." And he said, "That represents a cargo that I have outside, and when I sell that I will have available money to go on."

Mr. WILLIAMS.—With all due respect to your Honor, we again renew our motion to strike out all of the testimony as being hearsay.

The COURT.—It will be overruled.

Mr. WILLIAMS.—Note an exception.

TESTIMONY OF MRS. JUANITA BUNZEL
COHEN, CALLED FOR THE UNITED
STATES.

Mrs. JUANITA BUNZEL COHEN, a witness called on behalf of the United States, being first duly sworn, deposes and says: That she was employed by the Colombo Bullion Mines Co. in De-

(Testimony of Mrs. Juanita Bunzel Cohen.)
ember, 1923, and during that month met Daniel Henderson and Guyvan McMillan.

Mr. GILLIS.—You saw Mr. McMillan?

A. Yes.

Q. I will show you a bill, Mrs. Cohen, to the King Coal Co., and ask you if you recognize that?

A. I do not recognize the bill, but I know that I paid it.

Q. You paid a bill to the King Coal Co.?

A. Yes.

Q. On December 5, 1923?

A. Thereabouts, I don't remember the date.

Q. Do you remember about how much it was?

A. No; it was quite a bit. [47]

Q. Over \$300?

A. It was quite a bit; I could not remember the exact amount.

Q. Could you remember that it was over \$300?

A. I would not. It was in currency.

Q. It was in currency? A. Yes.

Q. Did you pay the bill, yourself? A. Yes.

Q. Who gave you the money to pay it?

A. Mr. McMillan.

Mr. WILLIAMS.—If your Honor please, this transaction, as I understand, relates to a period in December, 1923. While they are not restricted to the exact date of the alleged conspiracy, on or about February, 1924, that is a couple of months or so before. We object to this testimony as anterior to the time of the conspiracy that is alleged to have been entered into.

(Testimony of Mrs. Juanita Bunzel Cohen.)

The COURT.—I suppose the Government is leading up to it.

Mr. GILLIS.—Yes.

The COURT.—Overruled.

Mr. WILLIAMS.—Exception.

Mr. GILLIS.—Q. Who gave you the currency to pay this bill? A. Mr. McMillan.

Q. That is Guyvan McMillan? A. Yes.

Mr. GILLIS.—That is all.

Mr. WILLIAMS.—I would like to make the same motion with regard to that.

The COURT.—Overruled.

Mr. WILLIAMS.—Exception. . . .

TESTIMONY OF H. S. CREIGHTON, CALLED ON BEHALF OF THE UNITED STATES.

H. S. CREIGHTON, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a custom agent employed for the last sixteen years by the United States Government. In such capacity I interviewed the Captain and several members of the ship "Gulia" and took certain [48] papers from Captain O'Hagan.

Mr. GILLIS.—I show you one, evidently a part of a manifest, and ask you if that is one of the papers which was taken, part of the papers of the "Giulia's" crew? A. Yes, it is.

Mr. GILLIS.—I ask that this be introduced in evidence and marked Government's exhibit first in order.

Mr. CONNOLLY.—I object on the ground that it is not the best evidence; this purports to be a copy of the original document. Furthermore, the document was prepared, evidently, and executed in a foreign country, it is not properly authenticated, so that it can be received in evidence at this time, or at any time throughout the trial. Furthermore, it is a copy, and not the best evidence. I object on those grounds.

Mr. GILLIS.—It was seized or taken from the captain of the “Giulia,” and is part of the ship’s papers.

Mr. TULLY.—May I make the further objection that no foundation has been laid.

The COURT.—It will be received in evidence. (The document was marked U. S. Exhibit 1.)

Mr. TULLY.—May we reserve an exception.

The COURT.—Certainly.

Mr. VINCILIONE.—In order to save time, may it be understood that every time there is an exception taken by all defendants?

The COURT.—Yes.

Mr. GILLIS.—I desire to call the attention of the jury to this instrument. “Anglo Cuban Steamship Co.,” a receipt for 8418 packages of merchandise, listed as 7223 packages of whiskey, 400 packages of gin, 40 packages of rum—

Mr. CONNOLLY.—If your Honor please, inasmuch as the whole document is introduced in evidence, I demand that the whole document be read to the jury, and not some isolated parts of it. [49]

(Testimony of H. S. Creighton.)

The COURT.—Very well.

Mr. GILLIS.—265 packages of wines, 65 packages of brandy—

Mr. GILLIS.—That is up to you. I will read what I think is material:

“223 packages of liquors, 200 packages of champagne, 2 cases cigars, Vancouver, in transit. Consignees to have the option, weather permitting, to take delivery on the high seas, but in no case, and under no circumstances, is delivery to be made within 20 miles of any territory, and then only on the Pacific Coast within a radius of a line drawn due west of San Diego and a line due west of Seattle, always at least 20 miles from such described coast or territories. All island territories within this described area to be taken as the measurement point for such deliveries, if made, in order to conform with a recent treaty made between Great Britain and the U. S. A. Also should the maximum speed of any vessel taking delivery be more than 15 miles per hour, such excess speed must be added to the delivery distance from the within described area.”

Q. I show you another instrument, Mr. Creighton, and ask you if this is one of the instruments that was taken from Captain O'Hagan, of the steamer "Giulia"?

The COURT.—Is the captain one of the defendants in this case?

Mr. GILLIS.—The Captain is, and is present in court.

(Testimony of H. S. Creighton.)

Mr. McDONALD.—Have you a translation of this?

Mr. GILLIS.—No, I have not. I ask that that be introduced in evidence and marked Government's exhibit next in order.

Mr. VINCILIONE.—We object on behalf of the crew that it is not binding on them, immaterial, irrelevant and incompetent, and hearsay. [50]

Mr. TULLY.—We make the same objection, and not intelligible in its present form, no foundation has been laid.

The COURT.—Overruled.

Mr. GILLIS.—This document is in a foreign language, but the jury can decipher enough of it to see it is for the boat "Giulia," which was formerly the "Frontiersman," and the proprietor or owner of it is Guyvan McMillan, of Vancouver, British Columbia.

(The document was marked U. S. Exhibit 2.)

Q. I show you two other documents, and ask you if these were taken from Captain O'Hagan at the time the other papers were taken?

A. Yes, these papers were all taken from Captain O'Hagan at the same time.

Mr. WILLIAMS.—If your Honor please, these are documents printed in a foreign language; I do not understand the language. We cannot even tell what they purport to be. There is nothing shown concerning the authenticity, and we can only guess at what they are until we have a translation.

Mr. GILLIS.—I do not think it would make any difference. It came from the captain of the boat.

Mr. WILLIAMS.—They do not mean anything, they are rank hearsay, as I understand the law, except the fact that they were taken, and they are an admission against the captain; they are not declarations. One paper has the captain's signature, but the rest of the papers do not.

The COURT.—They are papers taken from the captain. I think that would be competent evidence.

Mr. GILLIS.—The history of the ship is taken from that paper.

Mr. WILLIAMS.—I move to strike out these various records and papers that are in here, they are certificates of [51] officers of a foreign country, some of them we cannot read, we don't know what they are, they are not signed by any of these defendants on trial, and, to that extent, they are hearsay; there is no foundation laid in this, that the authority at law to execute such documents is not proven.

The COURT.—I do not think that is important in a case of this kind.

Mr. GILLIS.—It goes to the weight of the evidence.

Mr. WILLIAMS.—And then, furthermore, there is nothing shown that this man actually did sign these documents or papers.

The COURT.—I understand they are offered by

the Government as papers that the captain surrendered to the customs office.

Mr. GILLIS.—Yes.

Mr. WILLIAMS.—I make that motion particularly with reference to my client, Mr. De Maria. I move to strike out all of the testimony of the witness.

The COURT.—It is overruled.

Mr. WILLIAMS.—Note an exception.

Mr. GILLIS.—I ask that this be introduced in evidence and marked U. S. Exhibit next in order. (The document was marked U. S. Exhibit 3.)

Mr. VINCILIONE.—The same objection, if your Honor please.

Mr. TULLY.—The same objection.

The COURT.—Yes.

Mr. GILLIS.—I show you another instrument and ask you if this was taken from Captain O'Hagan under similar circumstances as the other instrument in evidence? A. Yes.

Mr. GILLIS.—I ask that that be introduced in evidence and marked U. S. Exhibit next in order.

Mr. CONNOLLY.—The same objection. [52]

Mr. VINCILIONE.—The same objection.

The COURT.—The same ruling.

Mr. VINCILIONE.—Exception.

Mr. GILLIS.—It is a manifest of the steamer "Giulia," which lists the same number.

Mr. WILLIAMS.—If it is offered because it was gotten in the possession of this particular witness from Captain O'Hagan, all right, but if the United

(Testimony of H. S. Creighton.)

States Attorney is going to characterize it as a manifest, it is immaterial, irrelevant and incompetent, not admissible, because the courts have repeatedly held that manifests cannot be admitted in evidence unless the authenticity has been proven.

Mr. GILLIS.—It has written on it, “Manifest of cargo shipped on board steamship ‘Giulia,’ Captain John O’Hagan, at Havana, for Vancouver,” and lists the same liquors that I read in the other instrument.

(The document was marked U. S. Exhibit No. 4.)

Q. I show you three pieces of paper with type-writing on them, and ask you if you recognize those sheets, Mr. Creighton?

A. Yes, these sheets came into my possession under the same circumstances.

Q. Under the same circumstances? A. Yes.

Mr. WILLIAMS.—This letter is written in Italian.

Mr. VINCILIONE.—If Captain Gillis will be good enough to let us see a translation, if there is one, we can tell whether or not it is worthy of any objection on our part. It appears that the original letter, if that is the original, is not signed by any person.

The COURT.—I do not think that makes any difference. This is only offered in evidence by the Government as being found on one of the defendants.

Mr. VINCILIONE.—We are going to ask for

what purpose? [53] It seems to me to have no connection with the charge made in the indictment.

The COURT.—I don't know whether it has any connection with this alleged crime, or not. . . .

Mr. VINCILIONE.—The Court will decide whether it is material or not. It is difficult for us to know whether it is material, or not, there being no proof, for example, whether the person making these statements, whatever they are in the letter, had the authority to make them. It is a mere piece of paper.

The COURT.—I do not think that question is material at all. They were found in the possession of the captain, as I understand it. . . .

The COURT.—As I stated a moment ago, I think it is competent against the captain; whether it will be against the other defendants will be dependent upon subsequent developments in the case.

Mr. GILLIS.—I offer the original in evidence and ask that it be marked Government's exhibit next in order.

Mr. CONNOLLY.—I object to its introduction on the ground it is immaterial, irrelevant and incompetent, not binding upon the captain, a defendant in this case, that it is an unsigned document, and not written in someone's handwriting, written on the typewriter, and written in a foreign language, and no *evidence it* was found on the captain's person at the time, or in his possession.

Mr. GILLIS.—It was taken with the other papers. The witness has stated it came to him in the same

(Testimony of H. S. Creighton.)

manner the other papers came, taken from the captain, and is addressed to one of the defendants in this case.

Mr. TULLY.—May I make the same objection on behalf of the client I represent, Mr. Campanelli?

The COURT.—Yes. [54]

Mr. WILLIAMS.—That goes as to all of the defendants?

The COURT.—That goes as to all of the defendants.

(The document was marked U. S. Exhibit 5.)

That thereafter the Government introduced as Exhibit 5 a letter written in the Italian language.

Mr. WILLIAMS.—I make additional point, if this paper was taken from the possession of the captain, it has no more value than any other piece of waste paper. It is an unsigned letter, purporting to be written to someone, the authenticity of the name of the writer or the person who may have dictated it is not shown, and I believe in view of that fact if that letter is offered in evidence at this time to affect in any manner the determination of this jury concerning any of these defendants, it would be improper to read that letter before the jury, unless something is developed to connect that letter with some conspiracy in vogue here. I think we ought to wait until something develops.

The COURT.—There is no translation of it now. It is only introduced as a paper that was found in the possession of the captain by the customs officer.

· WITNESS.—(Continuing.) On or about the

(Testimony of H. S. Creighton.)

25th day of October 1924 I had a conversation with Captain O'Hagan of the "Gulia" and procured from him a signed statement. I made no offer of reward to Capt. O'Hagan at the time I procured the statement, nor did I make any suggestion or threat or pressure to induce the statement. It was transcribed immediately onto the typewriting machine and the original signed when completed. It was signed and sworn to by Captain O'Hagan. I was the agent who took the statement. Upon the day I procured the statement from the Captain I saw him early, at approximately 7 o'clock but he did not sign the statement until approximately 5 o'clock that afternoon.

Mr. CONNOLLY.—No, but I wish to bring to the attention of [55] the Court, the Government officer's statement; he wishes to make the Court believe a statement was given freely and voluntarily, and, therefore, if it is a confession, it is properly admissible [56] in evidence. However, from what I have learned from the captain, and from what I know of the case, the confession was given neither freely nor voluntarily, signed by the captain, nor was the captain in a real fit physical condition.

Mr. GILLIS.—If counsel wishes to take the witness-stand and testify, let him do so.

The COURT.—Let him cross-examine the witness.

Mr. CONNOLLY.—I will not argue it any fur-

(Testimony of H. S. Creighton.)

ther. Without the presence of the jury I would develop these facts from the witness.

The COURT.—You can ask the witness now.

Mr. CONNOLLY.—Q. Captain Creighton, what date did you first see Captain O'Hagan?

A. October 25, 1924.

Q. At what hour in the day?

A. Early in the morning, approximately 7 o'clock.

Q. At what hour in the day did he sign this alleged statement?

A. Late in the afternoon, approximately five o'clock.

Q. Were you with him throughout this time?

A. I was with Captain O'Hagan continuously from the time I first met him until he signed the statement.

Q. Is it not a fact that you were importuning him or requesting him to make a statement or admission as to his connection with an alleged boat carrying liquor?

A. I questioned him during this time.

Q. State, from your own observation, what the physical condition of Captain O'Hagan was at that time. A. I made no examination of him.

Q. Did he not state to you that he had been without food and water for some week or so?

A. No, because he had been on board a ship that was well victualed and was properly found.

Q. He stated it was not well victualed, did he not?

A. He came in on a ship properly founded. [57]

Q. The ship that unloaded him, or from which he

(Testimony of H. S. Creighton.)

disembarked, was properly victualed: Is that correct? A. Yes.

Q. Is that the ship on which he came originally?

. . . .

Q. Was he in your custody at the time this statement was made?

A. I met him at what is known as Meiggs Wharf. At that time he was on board the revenue cutter. I rode with him on that boat up to one of the piers, more nearly, probably Pier No. 5; we came ashore there, and together we walked up town, had some breakfast and went over to the customs-house.

Q. As a matter of fact, he was under arrest, was he not? A. He was not under arrest.

Q. He imagined he was under arrest?

A. What his imagination was I don't know.

Q. Could he have left your custody without your permission? A. He made no attempt to.

Q. Could he have left your room freely and voluntarily and gone about his business without your permission?

A. I would not have permitted him to.

Q. Then you had him in your custody, did you not?

A. I exercised no control of that sort over him.

Q. You would not have let him get out of the room, would you? A. No.

Q. He knew that?

A. What he may have known I do not know.

Q. At any rate, you would not have let him get out

(Testimony of H. S. Creighton.)

of your clutches. What did you state to him at the time you asked him to make this statement?

A. There was no formal statement to him on the boat. . . .

Mr. CONNOLLY.—I am trying to bring out from this witness how the confession was obtained, and instead of the witness hedging I think he ought to answer freely and voluntarily. ' . . . [58]

Q. Who prepared the statement?

A. I did the typewriting.

Q. Did you read it to him?

A. It was read over line by line to him, and he read it over himself, and carefully studied it before he signed it.

Q. The signing, though, was about five o'clock in the afternoon?

A. The signing was late in the afternoon.

Q. I do not wish to take up the Court's time, but I want to bring this out: Did you state the formal words that you have already uttered to Captain O'Hagan when you first started to interrogate him, that is, the formal words *tha*, "You are under oath, and this will or may be used against you"?

A. At the time I met Captain O'Hagan on the cutter I did not. At the time this statement was prepared this statement was started on it. . . .

Mr. CONNOLLY.—He stated he was continuously in the presence of the captain from early in the morning till late in the afternoon. The statement was signed late in the afternoon, and I am trying to show that he did not say these things to

the captain, at the first time he interviewed him, but did so at a late time in the afternoon so that he could testify to it on the stand, and that the captain did not voluntarily make this statement. I want to lay the foundation so that I can object.

The COURT.—You have gone far enough, I think.

Mr. CONNOLLY.—Do you restrict my cross-examination?

The COURT.—I think you have gone far enough to show it was a voluntary statement.

Mr. CONNOLLY.—I make the objection that the confession was not voluntary, and, therefore, inadmissible.

The COURT.—Overruled.

Mr. CONNOLLY.—Exception. . . .

The COURT.—If the statement involves anybody else, [59] it is not competent evidence against them unless they are subsequently connected with the conspiracy.

Mr. WILLIAMS.—If this witness was testifying, as he proceeded to testify, to things that were not binding on the captain or anybody else involved, we would then object to them, and they would stay out, but if you read a lengthy statement here, which might, as I say, involve a great number of other persons—without having seen it, I don't know—manifestly, something will go before the jury that does not belong there.

The COURT.—Haven't you seen the statement?

Mr. WILLIAMS.—No.

(Testimony of H. S. Creighton.)

The COURT.—Haven't you submitted it to the other side?

Mr. GILLIS.—No. The Government is not required to show statements that are given to Government agents. The decisions uphold the Government in that respect.

The COURT.—When you offer it in evidence you must show it to counsel on the other side.

Mr. GILLIS.—Certainly, when we offer it in evidence we will have it read.

The COURT.—They have a right to see it before it is read.

Mr. GILLIS.—If they want to see it after it is read, all right.

The COURT.—They have a right to see it before it is read. I thought it had been submitted to counsel. . . .

Q. Is it not a fact, Mr. Creighton, that you gave the captain to understand you would be assisted materially in this trial, or that the Government would, if he would tell about it and get the other defendants?

A. I did not make any such statement.

Q. You don't remember very clearly, do you?

A. I do remember very clearly.

Q. This is the last question I will ask you: Then, as I understand [60] it, the captain told you everything freely and voluntarily, without your urging him to do it, or without your taking advantage

(Testimony of H. S. Creighton.)

of his physical condition, or without any promise: That is your statement, is it not?

A. Without any promise, assuredly.

Q. Mr. Creighton, what you understand by a promise, technically and legally, may not be what the captain, in the ordinary way, understood by a promise. Would you say now that he did not think he was going to be granted some favors at your hands? A. What he thinks I don't know.

Mr. TULLY.—May it please the Court, may I make the formal objection with reference to that statement that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid, it does not tend to prove any of the issues set forth in the indictment, and it does not bear in any way on the conspiracy itself.

Mr. McDONALD.—The further objection that this statement was made after the arrest of the defendants, and the conspiracy was terminated, and it is purely inadmissible against any defendant except the defendant making the statement.

The COURT.—The jury will understand that this statement, whatever it is, is evidence against the captain, only, and if there is anything in it that implicates anybody else, that it is not evidence against the other people, but only against Captain O'Hagan, because it was made after the conspiracy had terminated, and, of course, a declaration at that time could not implicate somebody else in a conspiracy; otherwise, there would be no protection for an innocent person.

Mr. CONNOLLY.—The testimony of the witness was that it was made under his supervision. Might I ask if it was signed in your presence?

A. Yes. [61]

The COURT.—The captain's statement mentions other names, but it is understood, and the jury will understand now, that any declaration in that statement implicating anybody else is not evidence against the other parties, and will not be considered by them as such.

Mr. McDONALD.—I would ask in the interest of the other defendants, whose names may be mentioned, that those names be deleted at this time, and not read.

The COURT.—No. They may be read.

That thereafter the witness Creighton read the statement of defendant O'Hagan as follows: [62]

“San Francisco, California, October 5th, 1924.

“CREIGHTON.—State your name.

“Answer.—John O. Hagan.

CREIGHTON.—Mr. Hagan, I desire to question you concerning certain matters being investigated by the United States Customs Service. I will advise you that your answers are being made under oath; made without any promise of reward or immunity and without any pressure of threat or duress.

“Being first duly sworn the following answers were made by John O. Hagan in response to questions by Customs Agent H. S. Creighton, in the presence of Customs Agent E. E. Enlow.

(Testimony of H. S. Creighton.)

“Q. State your age, residence and occupation or employment.

“A. Age, 33—residence 52 Guelph Street, Kensington, Liverpool, England. Am a Ship Master.”

It has been corrected by Captain O’Hagan to eliminate the words “Am a,” and initialed on the margin to show he made the alteration in his statement, both initials; the original writing was “Am a Ship Master.”

Mr. CONNOLLY.—If your Honor please, I ask that the witness read the statement as it is now and not as it was originally.

The COURT.—Yes.

A. (Continuing.) Ship Master.

“Q. At the present time how are you or have you recently been employed?

“A. Since the latter part of April, 1924, I have been employed by Mr. Guyvan McMillan of Vancouver, British Columbia, as the master of the ship—which is now the ‘Giulia.’

“Q. What other name has this ship had while you have been master of her?

“A. At the time she was purchased by Mr. McMillan she was the British ship ‘Frontiersman’—on May 24th, 1924, I sailed with her from Los Angeles, California—the Panamanian Consul [63] in Los Angeles, California, granted her a provisional register, under which I took her to Panama City—where she was granted a permanent register under the flag of Panama. At the present time she is still under that register—her register being number 373.

“Q. From Panama City to what point did you take this ship?

“A. From Panama—through the canal to Colon—coaled in Colon and proceeded to Havana, Cuba.

“Q. Where and when did you see Mr. McMillan?

“A. The first time I ever met Mr. McMillan was about the middle of April, 1924—when I met him here in San Francisco—outside of the British Consulate. I met him that time by appointment. Then during the next two or three days I saw him once or twice here in San Francisco. I think he had at that time already been to Los Angeles and effected all negotiations for the ship. About one week or ten days after I first met Mr. McMillan I went to Los Angeles and took charge of the ship. Prior to going to Los Angeles he had engaged me as Master.

“Q. After you went to Los Angeles what was the next time that you saw Mr. McMillan?

“A. About ten days afterwards he came down from San Francisco. He remained in Los Angeles or San Pedro—which is the port at Los Angeles—until we sailed.

“Q. Have you seen Mr. McMillan since that time?

“A. Never.

“Q. At Havana, Cuba, what cargo did you take on board the ‘Guila’?

“A. Referring to the papers which I have—I think the best record of this cargo is found in the ship’s manifest. This reads as follows:

“ ‘Anglo Cuban Steamship Company.
Glasgow—Havana—Cuba.
‘A. C.

Manifest of cargo shipped on board S. S. ‘Giulia’
Captain John O’Hagan at Havana for Vancouver.
No. 1— Date of sailing 7th, July, 1924.

Item:	Shippers:	Consignees:	Destination:
1	Anglo Cuban S. S. Company as Agents	order in transit for Hong Kong.	Vancouver
	Goods,	Marks and	Weight
[64]		Numbers.	T. C. Q. x lbs.
6223	Pkgs. Whiskey)		
400	“ Gin)		
40	“ Rum)		
265	“ Wine)		
65	“ Brandy)	L. H.	
223	“ Liqueurs)		
200	“ Champagne)		
2	cases cigars.)	Vancouver in transit	
			<hr/> 179. 17. 3.

E. & O. E.

ANGLO CUBAN STEAMSHIP COMPANY,
(Signed) J. S.

7/7/24?

“Q. What if anyone representing the owners of either your ship or cargo did you meet in Havana?

“A. In Havana I met Mr. Leonard Holmes—and a Mr. Stevens, whose initials I am not able to give correctly at this time but his initials may be ‘J.’ and a man from San Francisco that they called ‘Joe’ Campanelli.

“Q. Do you know whether or not this is Ricardo Campanelli who resides at 1757 Chestnut street, San Francisco?

“A. I do not know what his residence is—I met him here in San Francisco.” . . .

Mr. TULLY.—May I interrupt to have the name “Campanelli” stricken out?

The COURT.—The motion will be overruled.

Mr. TULLY.—Exception.

A. (Continuing.) “After I met Mr. McMillan, I then met Campanelli at 17 Columbus Street. I met them there probably three or four times. At that time I was looking for the job as master of the ship which I had learned McMillan had just purchased. Later Campanelli came to Los Angeles with McMillan, and they were around there together until I sailed. [65]

“Q. Before McMillan and Campanelli left Los Angeles—who directed you to proceed to Havana?

“A. Mr. McMillan.

“Q. At the time you left Los Angeles was there any arrangements made that Campanelli should meet you in Havana?

“A. That was the arrangement and my instructions from Mr. McMillan. I was to proceed to Havana where I should be met by Campanelli. There I was to take on such cargo as Campanelli directed.

“Q. Then it was under that arrangement that you met Col. Holmes, Stevens and Campanelli?

“A. Yes. I don’t know whether or not this Mr. Holmes is a Colonel or not but they called him ‘Colonel.’

“Q. You had never previously seen this Mr. Holmes or Stevens previously? A. No.

“Q. Judging from their conversation with you or

in your presence are McMillan and Stevens from San Francisco or familiar with San Francisco?

“A. I would judge that they are not familiar with San Francisco. They may be Scotch or something of that kind.

“Q. Then they represent the ‘Scotch’ end of this deal you think? A. I don’t know—maybe.

“Q. Do you recall the date of your sailing from Havana?

“A. My manifest is dated—July 7th, 1924—I sailed on that date.

“Q. What was the destination for which you sailed?

“A. I think first I better call your attention to the special clause which appears in my copy of my bill of lading. This reads as follows: Above reciting the details of the cargo as quoted above from the manifest the following clause was written into this bill of lading:

““Consignees to have the option, weather permitting, to take delivery on the HIGH SEAS, but in no case and under no circumstances is delivery to be made within TWENTY MILES of any territory and then, only on the PACIFIC COAST within a radius of a line drawn due west of SAN DIEGO and a line due west of SEATTLE, always at least TWENTY MILES from such described coasts or territories. All island territories within this described area to be taken as the measurement [66] point for such delivery, if made, in order to conform with the recent treaty made between Great

Britain and U. S. A. ALSO, should the maximum speed of any vessel taking delivery be more than fifteen knots per hour, such excess speed must be added to the delivery distance from the within described area.'

"Q. Leaving Havana, Cuba on July 7th, 1924, to what points did you sail the 'Giulia'?"

"A. Through the Panama Canal to Mazatlan, Mexico. Was there about ten days more or less. Referring to the clearance granted me at Mazatlan, Mexico, I will say that I anchored first at Mazatlan on August 5th, 1924, and sailed from there on August 11th, 1924.

"Q. For what purpose did you stop at Mazatlan?"

"A. For fuel.

"Q. Under what arrangements did you secure fuel—also what class of fuel does the 'Giulia' use?"

"A. We use only coal for fuel. First I believe I should state that I had on board a man by the name of 'J. Gerbaudo' that I usually called 'Joe.' This man was on the articles as 'Contador' or purser. He came down from San Francisco to represent *to* owners on board the ship. He signed on at Los Angeles and that was the first place I saw him. He came down with a number of the crew. Looking at the crew list I will say that he came down with the following:

"F. Janeo" who is signed as a 'Marinero'

J. Mossino who is signed as a do,

Roberto Castagno who is signed as a Fogonero, or fierman.

“When I left Havana it was my arrangement with Campanillo that I was to cable back to him at Seville hotel at Havana—the correct name of this hotel was the ‘Seville—Biltmore’—Campanillo had been stopping there with Holmes and Stevens. Now it was through Gerbaudo that I notified Campanillo at Havana of our arrival at the Canal. This cable was sent from Colon. We went on through the Canal and to Panama Bay and while there there was a boiler explosion on board which required some repairs and we exchanged further cables between us and Campanillo at Havana. Am not sure but think that we [67] had to get some money ashore there at Panama City to pay for these repairs and other expenses.

“Q. When you left Panama was it your intention to stop at Mazatlan, Mexico, or were you forced to go into there for fuel?

“A. I had cleared from the Canal for Mazatlan but I would have been compelled to go into there for fuel.

“Q. While you were in Mazatlan did you communicate with either of your owners?

“A. Yes, we had to have money authorized to pay for coal—when I got into there I sent a cable to Campinello here in San Francisco but did not get an answer to this. Gerbaudo also sent cables and the result was that we finally had \$3,500—remitted to us there. We purchased our coal from the railroad company there at a cost of \$75.00 per ton. There was several days delay in getting this

money and the coal but it was finally arranged. While we were there waiting—on two different occasions we had to go outside of the harbor because of those northern winds down there.

“Q. After you left Mazatlan, Mexico, to what point did you proceed?

“A. Under instructions from the owners, received through Gerbaudo I proceeded North and cruised around a point thirty miles west of the Farallone Islands—it was my instructions that I should proceed to a point thirty miles off Half Moon Bay and that there would be a boat meet me there with instructions.

“Q. What date did you arrive off the Farallones?

“A. When I left Mazatlan I expected to be off the Farallones in about ten days. I left there on August 11th, and as I recall it it was August 22d, 1924, before I arrived off Farallones. I arrived out there in a fog and hung around there two or three days waiting for communications from shore—I was then getting short of fuel and had to go back to Ensenada, Mexico, for fuel.

“Q. You had no wireless or other means of communicating with the shore on board the ‘Giulia’?

“A. No, we had no wireless. [68]

“Q. How did you manage to get back down to Ensenada if you had no fuel?

“A. We had some fuel and I also used my sail in getting back down there—I also burned my boat deck and stairways for fuel getting down there.

“Q. How long did it take you to get back down to Ensenada?

“A. This was about the 1st, of September, 1924. I believe I was there three days and sailed Sept. 3d, 1924. It took me about seven days to get back down to Ensenada.

“Q. Then how did you communicate with San Francisco?

“A. Getting back down as we were outside of the ‘Los Coronada’ islands I spoke a ship and asked them to send a *cable McMillan* at San Francisco advising them that I had to go into Ensenada for fuel. It is my opinion that they did not send this cable.

“Q. What address in San Francisco did you give for the delivery of this message?

“A. 17 Columbus Ave.

“Q. Why did you not come into San Francisco for fuel when you were only a short distance off shore?

“A. When you have a cargo like that you don’t want to attract any more attention than you have to.

“Q. It is the information of the United States Customs Service that you were met at Ensenada, Mexico, by Campenillo, and John B. Demaria and another man, all from San Francisco. This is correct, is it not?

“A. As soon as we cabled from Ensenada Campenillo and another man who may be related to

Campenillo but whom I do not know the correct name for—they came down.

“Q. What is the name that this man was called by that came with Campenillo?”

“A. Campenillo is a man about 26 or 27 years of age and this other man is about the same age. As near as I can give the name they called him by it was ‘Ricon.’”

“Q. Then the third man Demaria when did he come?”

“A. I do not know this man by the name of Demaria—in fact I do not believe I heard his name at all. However there was another man that came down. [69] The name of this man may be Demaria but of this I am not certain; I have heard that name but was not introduced to this man at Ensenada by any name. My recollection is that he came down the next day after Campenillo and Ricon and I only saw him around there that one day. My recollection is that this third man came out to the ship and was on board only a few minutes and then later I met him on shore with Campenillo and Ricon and we all four had some drinks there together on shore.

“Q. In what manner did you go about getting your fuel at Ensenada?”

“A. I waited until Campenillo and these others came down and they made all arrangements. I reported to them that I was out of coal and when they came down they made all arrangements and the ‘Gryme’ brought me seven hundred sack of coal.

“Q. Did they bring you other supplies of any kind on the ‘Gryme’?”

“A. As I recall I bought some food there at Ensenada but the ‘Gryme’ did not supply me with any.

“Q. Leaving Ensenada—what was your instructions as to where you were to proceed to?”

“A. This time I came to a point off the Farallones Islands—this point was to be in accordance with my instructions in my bill of lading that is to be outside of certain limits from shore. The coming to the point off San Francisco was in accordance with my instructions received by cable while in Mazatlan. Before I left Havana it was agreed that I should receive instructions from San Francisco as to the point where I was to stop—that is with respect to the point I was to be opposite of and I was to see that it was outside of certain limits as I have said.

“Q. Before you left Ensenada—it is our information that Campenello advised you that you would have a boat communicate with you from shore as soon as you took up this position off the Farallones. Is this correct?”

“A. Not entirely. I advised Campenillo that it would take me approximately three days to come [70] up and it took me three and a half days. Then the following morning there was a small boat came to me. I could not say that this boat came to me from shore or as to where it came from.

“Q. What type of boat was this that came to

you next morning and do you know the name of it?

“A. It was a boat probably thirty feet long. I don't know the name of it. I believe it had a number and I did not notice a name.

“Q. How long did you remain off the Farallones?

“A. Was there until the 8th of October when I ran out of fuel and commenced to drift south.

“Q. Then you were out there off the Farallones more or less thirty days?

“A. About that I kept cruising up and down in that general vicinity.

“Q. During this thirty days did this same boat return to you at other times?

“A. For about nine days before I started to drift south I was out there in very heavy weather and during that nine days none of these boats came out to me—nor during the following sixteen days when we were actually drifting. Prior to that this same boat came back probably three times.

“Q. Each time you loaded on to this boat from your cargo various quantities of liquor. Is this correct?

“A. The first time we it took approximately three hundred cases, and on each other voyage she took more or less the same quantities.

“Q. There were also other boats of a similar type that came to you and took from your cargo quantities of liquor?

“A. I believe only this and one other one that came to us and took liquor from our cargo. I

cannot give you the name of this second boat either.

“Q. Our information is that the boat ‘Shark’ came out to you and brought you coal and other supplies. Is that correct?

“A. About Sep. 24th, 1924, a boat brought us out about seventy tons of coal. I think the name of this boat was the ‘Shark.’ They [71] brought us no other supplies. She did put some water aboard us with a hose.

“Q. Your documents show that you left Havana with a crew of eighteen men including yourself. The S. S. ‘Brookings’ picked you up yesterday in two life-boats—at this time there were only yourself and twelve other men from your crew. What became of the other members of your crew?

“A. Mariano Rigada, who was a *Marinero*, died from some kind of stomach trouble—probably gastritis, on September 13, 1924. He was buried at sea. This was the day after we arrived off the Farallones from the south. Before we left Ensenada he was treated by Dr. Morales at that port.

“On Sept. 14th, 1924, the man J. Gerbaudo left the ship. He went off on one of these boats that had taken a cargo of liquor.

“On September 19th, 1924, the man F. Janeo, also left the ship on one of these boats that had taken a load of liquor from us.

“About one week before the crew left the boat—we were in distress—and P. J. Walsh and H. M. Cummins volunteered to take a small boat and

undertake to get back on the path of the ships that travel this coast. We had drifted probably sixteen or seventeen miles off shore—ordinarily ships going down the coast can keep within three miles of shore and I was well to the west of that.

“Walsh and Cummins volunteered to see if they could get back in a small boat and get us assistance. I have not seen or heard of them since.

“The balance of the crew I brought in with me. On October 24th, 1924, we had been in distress now for twenty-five days—for the past eight or nine days the crew had been determined to leave the ship. We were entirely out of fuel—and at the very last of our food—and in addition the fresh water was almost out and they were insisting that we abandon the ship.

“Yesterday morning, October 24th, 1924, we opened the seacocks— [72] and the bulkhead doors and about 7 A. M. left the ship in two lifeboats. About 11 A. M. we were picked up by the S. S. ‘Brookings’ and brought into this port on board her.

“I have read the above statement before signing same and this is a true and correct statement made without reservation.

“JOHN O’HAGAN.

“Subscribed and sworn to before me this twenty fifth day of October, 1924.

“H. S. CREIGHTON,

“Customs Agent.

“Witness: E. E. ENLOW.

“CREIGHTON.—Supplementing the statement which you have just completed and signed above I would like to ask one more question”—

Mr. CONNOLLY.—This latter portion is signed by Captain O’Hagan? A. Yes.

“Can you state the number of cases of liquor which were left on board the ‘Giulia’ yesterday morning when the crew left her?

“Answer. From my information from the purser and mate there were five thousand two hundred and eighty cases of liquor left on board her.

“JOHN O’HAGAN.” [73]

The following is a photostatic copy of a Government exhibit purporting to have been executed in a foreign language.

1834

88



REPÚBLICA DE PANAMÁ

SECRETARÍA DE INGRESOS

No 375.

Patente de Nacionalización del buque a vapor "GIULIA"

EL SUSCRITO JEFE DE LA SECCION DE INGRESOS DE LA SECRETARIA DE HACIENDA Y TESORO

CERTIFICA:

Que el señor Doctor Juan B. Morales ha registrado ante el Inspector Jefe del Resguardo Nacional de este puerto de Panamá, una nave de propiedad de Don Juan de Millan, de Vasconcelos, B. O., Canadá, -nave de - lugar, mayor de edad, soltero, y con domicilio en -

Dicha nave es de una málica, una cubierta y dos mástiles y tiene las siguientes dimensiones:
Eslora 169 8/10 Manga 24 1/10 Puntal 14 25/10 Toneladas de registro 281.-

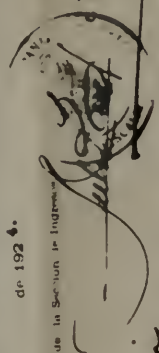
Nombre y nacionalidad anterior de la nave: YPOKRI MARU, Japonesa.

Por tanto le expido esta PATENTE por lo que se tendrá como nave panameña
Dado en Panamá, a 31 de Junio de 192 4.

El Jefe de la Sección de Ingresos

Requerida en la Inspección del Puerto bajo el número 18.

Juan B. Morales



Handwritten notes and scribbles at the top of the page.

3.5

18 Junio X

Handwritten signature

OFICINA DE REGISTRO PUBLICO
PANAMA

Presentado este documento a las 9 1/2 m.
del 13 de Junio de 1924 Tomo 11
Folio 241 asiento 1834 del Duesda
del Junio de 1924
Antonio A. Aza

Inscrito a 3 copias anterior en el registro de
Navio, bajo el n.º 431

Tomo 29

Folio 470

Asiento 1

Derechos: B1 3.00
Panamá.

Junio 14 de 1924

Handwritten signature
Jefe de Seccion
de Registro



(Testimony of H. S. Creighton.)

Mr. CONNOLLY.—At this time we will move to strike out the testimony on the ground that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid.

The COURT.—It is only admitted against the captain. . . .

WITNESS.—(Continuing.) After I procured the statement from Captain O'Hagan I interviewed two members of the crew, Mr. Daniell and Mr. Rodney, who are also defendants in this case.

Mr. VINCILIONE.—I assume that all of the objections that were made before to the introduction of the statement of the captain *of the captain* will apply to the introduction of any statement made by Mr. Daniell or Mr. Blackmore. I further object on the ground that it is not the best evidence, that the two men are here present in court, and that these statements made to Mr. Creighton could only be used as a matter of fact as a declaration against interest, if there is any difference between the testimony obtainable by the Government and this hearsay testimony. This is secondary testimony, as a matter of law.

The COURT.—Are these two parties under indictment?

Mr. VINCILIONE.—Yes, they are here, I submit that if your Honor please.

The COURT.—Objection overruled.

Mr. VINCILIONE.—Exception.

(Testimony of H. S. Creighton.)

Mr. TULLY.—May we make the same objection to this statement as made to the others.

The COURT.—Yes.

I questioned Daniell and Rodney while they were in custody at Angel Island, held by the Immigration authorities. The last time Daniell was questioned was February 14, 1925. Mr. Enlow, the custom agent, was present when I questioned the defendant O'Hagan, and the defendants Daniell and Rodney. I took the statement of Daniell and Rodney on November 29, 1924. Neither Rodney or Daniell signed the statement. [75]

WITNESS.—(Continuing.)

The COURT.—State what Daniel told you, not your conclusions at all.

A. I am following it too close. The statement of Daniell was that when Dietrick left the boat at Mazatlan Captain O'Hagan was very elaborate in saying farewell to him, and advising him to keep under cover and not get caught. When the boat left Panama Dietrick apparently was of the opinion that the ship was going through to Vancouver without stopping in the United States, and at Mazatlan he concluded that possibly he should not stay with the ship, for fear it had to go into some American port and he would be picked up., At Mazatlan the captain spent most of his time in company with the British Vice-Consul; during this time they were both in a badly intoxicated condition.

(Testimony of H. S. Creighton.)

As they were leaving Mazatlan, in addition to payments of money made to various port officers, the captain sent the British Vice-Consul and others a supply of liquor. It was Daniell's opinion that—

The COURT.—State what he said—state what Daniell said.

A. Daniell said that it was his recollection that the day that Henderson and the woman came to the ship was September 14; he was uncertain about the exact date, however, this also being the date that Joe Gerbaudo quit the boat and came ashore. Henderson and the woman, Patricia, came out to the ship in a boat where the crew was two Americans. The boat which brought them out did not have a name, but was numbered, as he recalled. The boat was painted a very dark green, and the numbers were lettered on in white paint. The crew consisted of a boy about 18 years of age, called Frank and another man 32 to 36 years of age, called Louie. Louie wore a wooly or hairy sweater. On the day that Henderson and Patricia came out the boat which brought them back took a load of liquor, and Patricia went ashore with them. About eight days later Patricia again came on board the ship, arriving in the same boat with Louie and Frank, and this time she came aboard and remained about 12 days. The boat which was operated by Louie and Frank was on several [76] occasions accompanied by a smaller white fishing boat, and it was on this boat that Henderson and Patricia

(Testimony of H. S. Creighton.)

finally went ashore. On the day that Henderson and Patricia went ashore on the white fishing boat, the boat first came to the "Giulia" and took Henderson and Captain O'Hagan with them over to the "Quadra." When Henderson and O'Hagan returned to the "Giulia," the white fishing boat then had a load of liquor aboard, and Henderson and Patricia came on to the shore on that boat. Using the time referred to above, Henderson arrived on the "Giulia" approximately September 14, and remained 8 days, until Patricia again came out and continued there about 12 days. This would bring him up to about October 4. These dates are all from memory, on the part of both Rodney and Daniell.

Mr. TULLY.—Are you reading Daniell's statement or a joint statement now? I mean, are you testifying as to the Daniell statement, or both?

A. This memorandum here reads both Rodney and Daniell agree as to that feature of the memorandum.

Q. Can you tell without making those remarks whether it was Rodney or Daniell?

A. This is the statement of Daniell.

Q. What are Rodney's remarks in there? Have you come to them?

A. I will separate them, or undertake to do so. . . .

Mr. TULLY.—We would like to know who is speaking.

(Testimony of H. S. Creighton.)

A. I am undertaking to quote Daniell. The mate, Paddy Walsh, would usually attend to the checking off of the cargo, although while Henderson was on board he would direct this operation.

The mess-boy, Castagno, waited on the table for Henderson and Patricia, and cared for the saloon where they were living, and he probably can verify the going and coming of this woman. The white fishing boat brought one load ashore from the "Giulia." At that time this boat came in company with that boat operated by Louie and Frank. There was only one man on board the white boat. He spoke English; approximately 30 years of age; wore high-laced boots, and riding pants. [77]

Joe and Ricardo came to the Farallones on board the "Giulia," and a launch brought them ashore. There was some doubt on the part of Daniell—

Mr. TULLY.—We move to strike that out. He should state what was said.

The COURT.—Yes.

A. This is a statement that Daniell said, he said he was in doubt about the next statement—I don't know whether that is proper.

Q. Yes.

A. He said that he was in some doubt, but it might have been Louie that brought Joe and Ricardo ashore. When Joe came ashore he wore

(Testimony of H. S. Creighton.)

a .38 pistol and a belt of cartridges strapped around his waist.

Ricardo, Campanellis and two others came on the "Nat" with the provisions. After the conditions on the "Guilia" became so bad, the crew finally stole all the weapons the captain had and threw them overboard. Daniell was not able to identify either the "Mallhat" or "Quadra" by name. He referred to them as a five-mastered schooner and another ship.

The statement of Rodney was to the effect that after Henderson was on board the ship Rodney had signed a receipt to Henderson for \$50.00 wages and had requested that Henderson transmit this money to Rodney's wife, Miss Merzelin Simonds, No. 70 San Ysidro Street, Havana, but Rodney had heard nothing from that remittance. That the woman Patricia came to the "Giulia" first probably September 14, this being the estimated date that Joe Gerbaudo quit the boat and went ashore. They came in a boat with a crew of two Americans; the boat had no name, but was numbered. Recall that there was a cipher in one of the middle numbers of the boat. The boat was painted dark green, and the numbers were lettered on in white. The crew of this boat consisted of one boy about 18 years of age, called Frank, and the other a man 32 [78] to 36 years of age, called Louie; Louie wore a wooly or hairy sweater. The day Henderson and Pa-

(Testimony of H. S. Creighton.)

Patricia came out the boat that brought them out took back a load of liquor, and Patricia went ashore with them. About 8 days later Patricia again came on board, arriving in the same boat with Louie and Frank, and this time she came aboard and remained probably 12 days. The boat operated by Louie and Frank was on several occasions accompanied by a smaller white fishing boat, and it was on this boat that Henderson and Patricia finally went ashore. On each day they went ashore in this white fishing boat the boat came first to the "Giulia" and took Henderson and Captain O'Hagan with them to the "Quadra" where they went on board. When Henderson and O'Hagan returned to the "Giulia," the white fishing boat then had a load of liquor on board, and Henderson and Patricia came on to shore on that boat. Using the above, Henderson arrived on the "Giulia" approximately September 14, and remained there 8 days, until Patricia came out, and continued there about to the 26th. This would bring him up to about October 4. These dates are all from memory on the part of Rodney. The mate Paddie Walsh would attend usually to the checking off of the cargo, although while Henderson was on board he would direct this operation.

The mess-boy, Castagno, waited on the table for Henderson and Patricia, and cared for the saloon where they lived. He could probably ver-

(Testimony of H. S. Creighton.)

ify the going and coming of this woman. The white fishing boat only brought one load ashore from the "Giulia"; she came then in company with a boat that Louie and Frank were operating. There was only one man on board the white boat. This man spoke English, and he is described as approximately 30 years of age, wore high-laced boots, and riding pants, was the size of Louie, but stouter. Rodney said that he could identify John de Maria having been on board the "Giulia" in Ensenada, with Joe Campanelli, [79] and the man whom Joe called his cousin. Joe and Ricard came to the Farallones on board the "Giulia" and a launch brought them to shore. There is some doubt on the part of Rodney but this may have been Louie who took them to shore. When Joe came ashore he wore a .38 pistol and a belt of cartridges strapped around his waist. Later the "Nat" brought out provisions, consisting of the following provisions, potatoes, canned milk, Armour's bacon and corned beef, oranges, apples, flour, celery, tomatoes, cabbages, eggs. Ricardo, Campanelli and two others came on the "Nat" with the provisions. At this time they took no liquor back with them, but soon afterwards they brought some coal, and on that voyage and each other time they took back liquor ashore with them. There was some uncertainty on the part of Rodney, but he believes that Joe Campanelli came out one time later on the "Nat,"

(Testimony of H. S. Creighton.)

but he did not remain, he went right back ashore with a load of liquor. Rodney was of the opinion that the man referred to as being the only man on the white fishing boat came out with the "Shark" when she brought some coal. While off San Francisco the captain and purser, Joe Gerbaudo, said the Mexican authorities had changed the ship's papers, so that they could not go to Vancouver until the cargo had first been discharged. When they were first taken on board the "Brookings," Captain O'Hagan told Rodney and other members of the crew that they were *no* going to San Francisco, and would have to face the court; that they must not, under any circumstances, admit that the "Giulia" had been loaded with liquor, or that any of the launches from ashore had been alongside. They had a Winchester machine gun on board which at times was mounted forward, and again aft. It was fired two or three times by Gerbaudo, but apparently only as a test. There were about six long-range rifles on board, and when any launch would show up the Spanish members of the crew were ordered to arm themselves and take certain designated [80] positions until the identity of the launch was determined. After conditions on the "Giulia" became so bad, the crew finally stole all the weapons the captain had and threw them overboard. In Havana, Joe Campanelli said to Rodney he was the boss of this ship, and

(Testimony of H. S. Creighton.)

again in Ensenada, when Rodney complained of the treatment he had been receiving at the hands of Captain O'Hagan; it was at this time that Joe Campanelli said he was the boss of the ship, and he would see that the captain was required to treat him all right. Rodney was not able to identify the "Malahat" or "Quadra" by name, but referred to them as the five-masted schooner and another ship.

Mr. WILLIAMS.—If your Honor please, at this time I ask for an order from this Court instructing the jury to absolutely disregard the statements which have been read here in evidence, and have manifestly been read in evidence by this witness, because he did not read this statement for any improvement of his recollection—he could not have been asked with relation to the visit of De Maria at Ensenada, he could not have been asked that parole question without argument, and I assign it an absolute misconduct on the part of the district attorney, and I think the jury ought to be instructed in regard to it.

The COURT.—The jury will understand that these statements are only evidence against Daniell, and Rodney, and not anybody that he mentions in the statement. That is all they are.

Mr. GILLIS.—That is all they are offered for.

Mr. TULLY.—For the purpose of the record, I make the same objection.

WITNESS.—(Continuing.)

(Testimony of H. S. Creighton.)

Mr. GILLIS.—I show you a book and ask you if you recognize that book? A. Yes, I do.

Q. Was that one of the books that was received from Captain O'Hagan [81] similar to other ship's papers that were taken from him?

A. This book was turned over to me at the same time by Captain O'Hagan.

Mr. GILLIS.—I ask that the book be introduced in evidence and marked Government's exhibit next in order.

Mr. TULLY.—We make the objection that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid, it is hearsay, the handwriting has not been proved, there is nothing here to show its materiality in any sense, whatsoever.

The COURT.—What is it? What does it purport to be?

Mr. GILLIS.—The purport of it is a record of the ship's transactions, and members of the crew, showing the members of the crew and payments to them.

The COURT.—What were the ship's papers, part of the ship's records?

Mr. GILLIS.—Part of the ship's papers; it runs from April 15 to June 20; it shows a record of the ship.

The COURT.—It will be admitted then.

Mr. TULLY.—Just a moment before your Honor

(Testimony of H. S. Creighton.)

makes a ruling. That is a mere statement on account of counsel; he has not proved the identity of that book.

The COURT.—He got it from the captain, though.

Mr. GILLIS.—Yes.

The COURT.—The captain turned it over to the customs officer.

Mr. TULLY.—Suppose there were any other paper, is it admissible proof because it was taken from the person of the captain? There is only one person as to which counsel wants to introduce that book, and that is not to prejudice the captain, at all, but he desires to prejudice another defendant.

Mr. GILLIS.—You are stating the purpose of the district [82] attorney. I will take care of that.

Mr. CONNOLLY.—On behalf of the captain I make the further objection that it is a violation of the constitutional guarantee guaranteed to him under the Fifth amendment of the Constitution.

The COURT.—Objection overruled.

Mr. CONNOLLY.—Exception.

The COURT.—You can have an exception.

Mr. GILLIS.—I desire to call the jury's attention to this book; it is an ordinary day-book starting out on April 15:

“Mr. Blackmore engaged as engineer, Mr. Daniell engaged as second engineer, and certain pay-

ments made to those individuals, Gerbaudo, Patrick Walsh and other members of the crew mentioned." The next page, May 15, shows a list of the captain, the engineer and second engineer, and certain members of the crew. On the next page, May 15, it shows morning at San Pedro, and the captain and the chief and second engineer and mate and certain members of the crew there; it runs on the 16th, on the 17th, on the 18th, on the 19th, on the 20th, 21st; on the 21st is a note that Mossino changed from sailor to fireman, and another man from fireman to sailor. Received from Mr. Campanelli \$1000. Campanelli left for San Francisco, and certain payments made to the crew. On the 22d are still shown certain payments that were made to the crew, clear on down to the 23d. On the 23d again it shows a man engaged as sailor at \$98. Received from McMillen \$2200; paid Spreckels for coal \$1700, and it runs on, and there are certain days, the 27th down to June 3d it just gives the date without any reference to what they were doing. Here on June 11th are certain payments to the crew, on the 12th and 13th, 14th, until we get down to the 20th day of June, which is the last item shown, Havana Harbor 7:30 A. M.

Mr. TULLY.—I wish to assign as prejudicial error the [83] reading from that book of a reference to any other defendant than Captain O'Hagan.

The COURT.—You can make the objection.

(Testimony of H. S. Creighton.)

Mr. TULLY—I ask that the jury be instructed to disregard any reference by counsel.

The COURT.—I have told the jury time and again that the entries at this time are not to be taken against anybody except the captain.

Mr. TULLY.—Exception.

WITNESS.—(Continuing) I had a conversation with the defendant De Maria on September 15, 1924. The interview took place in my office in the presence of Mr. Enlow. . . .

Mr. TULLY.—We make the formal objection that it is immaterial, irrelevant and incompetent, and hearsay, so far as any of the other defendants are concerned.

The COURT.—Yes.

I made a written memorandum of De Maria's statement. A Mr. De Maria was in my office September 15, 1924. He was questioned as to his age and his residence. I cannot give you his age or residence exactly. I believe he said his age was 50. He made reference to the fact that he had previously owned a certain saloon in Mexico, at Tia Juana; that he had operated this in some manner with a man by the name of Gandi, but that the original saloon or the business had been dissolved, I believe due to the fact that there was a fire destroyed the business; and that later Gandi formed some alliance with another saloon man in Tijuana and continued to operate the saloon, which I believe is the Red Mill; that he, himself, De Maria, had owned what is known in San Francisco as

(Testimony of H. S. Creighton.)

Caesar's Grill or Restaurant, that he had sold it, and he stated the names of the [84] parties to whom he had sold it; and I believe he disclaimed that Caesar's Grill had ever been searched, or any seizures of liquor made while he was operating it, but that after he had sold it it had been searched, liquor found there, and arrests made there several times; that there was a man, whose name I can't recall, that he had known him for some time, who owns the wholesale liquor house at Ensenada; that he, himself, De Maria, made a practice of running down to Tijuana and Ensenada, or to Tijuana at irregular intervals, largely for his own personal entertainment; that he had known this wholesale or warehouseman for some time—I can get the man's name.

A. Cardinelli—that he had known Cardinelli for some time; that Cardinelli had solicited him to join with him in the wholesale liquor business, the ownership of this warehouse, and that he had gone with Cardinelli or at his solicitation, I am not quite certain; that Cardinelli owned a bonded liquor warehouse in Ensenada and was building a brewery and distillery at Tijuana; Cardinelli had been trying to interest him, De Maria, to invest some money in this enterprise, and De Maria said that he might take a share in it, but up to the present time had not done so; that he went to Tijuana the last time about three weeks ago, went down to Ensenada to see Cardinelli, and while there he was advised that there was an Italian ship in the harbor that was in distress. . . .

(Testimony of H. S. Creighton.)

Mr. GILLIS.—He can look at it and read from the statement if he desires, before he goes on with the conversation, at any stage.

A. That he went down to Ensenada with this man Cardinelli, and while in Ensenada he had learned that there was an Italian ship in port in distress; that some man who had been employed by him I believe previously at the time he was in business in Mexico, and was not a policeman, I think—that the Mexican authorities had [85] taken—that he had learned the Italian ship was in the harbor and in distress, and that she had a large cargo of liquor on board, probably 8,000 or 9,000 cases, and he hired a local boatman, not this policeman, but a local boatman and alone was taken out to this ship and saw that it was not an Italian flag, and did not go aboard. Later, after he was ashore, he met the captain and some officer from the ship in one of the saloons, and they had a few drinks together, and this captain said that his liquor cargo was destined for McMillen at Vancouver; that the ship, the “Giulia,” was about 50 years old, and a regular coal hound, and that he had found it necessary to burn some of the rails and superstructure in order to get in to Ensenada; that he came there in distress for both water and coal, and that he was now waiting for coal to be sent by Beermaker, a broker at San Diego, that he had ordered this coal but was in doubt about it coming, and asked De Maria that when he arrived in San Diego he should request Beermaker

(Testimony of H. S. Creighton.)

to send it. Beermaker owns the ship "Gryme" and runs it in the supply business from San Diego to Ensenada, Mexico. Apparently, it makes a daily trip, but there was some doubt about getting this coal down, and the captain of the "Giulia" was anxious. De Maria said that he remained in Ensenada only about four hours and came back to Tijuana, and traveled by bus to San Diego, at which point he telephoned to Beermaker about this captain's request, and was advised that all arrangements had been made. De Maria claimed that he had no interest in the ship or the cargo, or the supplying of it with coal, other than above, and did not pay for the coal or guarantee the account in any manner. He said that he proceeded from Tijuana to Los Angeles by bus and by private automobile from that point to San Francisco. It was at this point in the interview that he made reference to the Mexican policeman that had previously been employed by him in Tijuana while he was in business at that point, [86] and that it was from this policeman that he received the information that the "Giulia" was an Italian ship and in port. He did not recall the name of the policeman. The Mexican Government had inspected the cargo of the "Giulia" and as the same was not destined to be discharged in that port, it had placed two policemen on board as guards. De Maria's policeman friend may have been one of those so detailed; he was uncertain about that.

De Maria described the captain of the ship as

(Testimony of H. S. Creighton.)

being a dark-complected Englishman about 50 years of age, not, however, so dark as his own complexion. He denied that he had made any presents of quantities of liquor to any Mexican officials, either direct or through this captain, while he was in Ensenada. He stated that the captain explained that his cargo consisted of Bicardi rum and Bourbon whiskey, a class of goods of which the liquor supply houses at Vancouver were short; that they had plenty of Scotch but none of this class of goods, this being De Maria's explanation as to why he felt certain that the cargo was to go on through to Vancouver. He stated that the ship came through the Panama Canal.

Mr. De Maria said further that a short time after seeing this ship in Ensenada, that he had read in the paper that there was a rum runner loaded with 35,000 cases off Los Angeles in distress, and that he believed the quantity of cargo is merely an exaggeration, and would imagine that this is the same ship "Giulia" saw in Ensenada, because it would have had about sufficient time to reach Los Angeles. The restaurant which he had previously on Columbus Avenue was Caesar's Grill, that he had sold this to Fornee and Dutch White, and after the place was sold he believed it was raided two or three times. He, himself, De Maria, had not been in British Columbia since 1895; he was on the boat "Tamalpais" about 5 A. M., September 12, 1924, when the rum runner power boat was burned at Sausalito; he saw it burning. His in-

(Testimony of H. S. Creighton.)

formation is that the boat was [87] tied near the dock; one man went aboard to start the engine, it back-fired and set fire to the boat. This engineer jumped overboard and swam to the nearest boat, which was anchored so near it had to move away from the fire. The boat that was burned is, or should be, well known in Sausalito as a rum-runner. During this time it had tied up there every two or three days. It was his opinion that it was used to go out to sea, take off 100 or 125 cases, land them down the coast, probably at Half Moon Bay, and then come back into the harbor without any liquor aboard; and await the next opportunity to repeat the operation. De Maria stated that he knows of no liquor operations being carried on in San Francisco at that time, that is, none that he cared to discuss, but he said he believed Joe Parenti and Eddie Marron had been hit very hard by their losses. . . .

Mr. TULLY.—We make the same motion, to strike it out.

The COURT.—Yes

Mr. VINCILIONE.—I would ask, if your Honor please, that the evidence of Mr. Creighton be excluded at this time, for the reason that it nowhere shows that the conspiracy existed, and that the members of the crew were members of the conspiracy, no contact shown between them. I make this objection pro forma at this time.

The COURT.—Yes, it will be overruled.

. . . .

(Testimony of H. S. Creighton.)

On cross-examination the witness testified as follows:

The defendant De Maria came to my office in response to a telephone call. I do not remember showing a picture of the boat "Guilia" to De Maria. I have a photograph which purports to be a photograph of the boat "Guilia." I have another picture in my pocket. I did not show this picture either. My best recollection is that De Maria stated the cargo on the "Giulia" belonged to a man named McMillan. He explained his entire [88] connection with it resulted from a request from the Captain to see that he got coal. . . .

Q. And did you not testify in this court that a Mexican official formerly at Tijuana had told De Maria, according to De Maria's statement, that this boat belonged to a man named McMullen?

A. Is your question, did De Maria make that statement to me?

Q. Yes; that the Mexican official had told him that? A. A Mexican policeman.

Q. That is what you testified to this morning?

A. Yes.

Q. That it was not De Maria that told you that he knew that the boat belonged to McMullen, but it was merely that he, De Maria, had been told by the Mexican policeman? A. I don't know.

Q. Isn't that what you testified to this morning?

A. No, sir.

Q. Haven't you any recollection of your testimony this morning?

(Testimony of H. S. Creighton.)

A. No, sir, not to that extent.

Q. You have no independent recollection of your testimony this morning?

A. No, sir, not to that extent. I testified this morning from the memorandum. . . .

De Maria stated to me that Beermaker, the custom broker at San Diego, had taken up with the authorities at San Diego the matter of coaling the "Giulia" in Mexican waters.

TESTIMONY OF WILLIAM A. NEWCOM,
CALLED AS A WITNESS FOR THE
UNITED STATES.

WILLIAM A. NEWCOM, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a passport agent of the Department of State and I have translated the Italian letter marked Government's Exhibit 5.

Mr. CONNOLLY.—I object to its introduction on the following grounds: The testimony yesterday of Mr. Creighton was that this letter which is now being introduced in evidence was taken from the person of Captain O'Hagan. The Government at this time desires its introduction in evidence.
[89]

Mr. GILLIS.—No, I do not; I am not asking for that, at all. The letter has been already introduced in evidence. . . .

Mr. GILLIS.—That is very true. I offer the letter and the translation in evidence.

Mr. CONNOLLY.—To which I will object on behalf of Captain O'Hagan on the following grounds: The testimony of Mr. Creighton was that this letter was taken from the possession or the person of Captain O'Hagan. Now, under the decision of the Supreme Court of the United States in *Boyd vs. United States*, this clearly would be inadmissible as a violation of the defendant's rights under the Fifth Amendment of the Constitution.

Mr. GILLIS.—I want to make myself clear. Whose rights do you claim have been violated?

Mr. CONNOLLY.—I am claiming that the rights of the defendant O'Hagan will be violated if this letter is introduced. Now, in the *Boyd Case*, the headnote No. 6 says, "The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and in a prosecution for crime, penalty or forfeiture, is equally within the prohibition of the Fifth Amendment."

It is immaterial whether the seizure was legal or illegal; it does not fall within the Fourth Amendment, which would relate to illegal seizures, but it comes clearly within the Fifth Amendment, that no man can be made a witness against himself. And this letter is similar in all respects to the document sought to be introduced in evidence.

The COURT.—In the *Boyd case*, the document was seized without a warrant. . . .

The COURT.—I am familiar with the Boyd Case; I do not think this case comes within the ruling of the Boyd Case. This is [90] evidence taken from a man, surrendered by him and found on his person.

Mr. TULLY.—At this time I desire to object to the introduction of the translation, and also as to the alleged letter, upon the ground that it is immaterial, irrelevant and incompetent, no foundation has been laid, that it is hearsay of the purest sort; that the document which they purport to introduce here appears to be a copy of a letter which is unsigned, and, so far as we can ascertained from the record, was never mailed, was never in the possession of the party to whom it was addressed, and was not taken from his possession. There is nothing to show that this document had ever come to the notice of any defendant in this case.

The COURT.—Except the captain.

Mr. TULLY—Except the captain, and the only matter that apparently came to his knowledge, so far as this record shows, was that the instrument came from his person. Now, as to the letter, itself, and the contents of the letter, it appears to have in no way come to the notice of any of the defendants, particularly the man to whom it was addressed.

The COURT.—It was taken from the captain and I think it is competent as against him. I don't know about the others. That will depend on circumstances.

Mr. KELLY.—Exception.

The following is a translation of the letter addressed to G. Campanelli: [91]

“Mazatlan, Mexico, August 11, 1924.

“Mr. G. Campanelli,
17 Columbus Avenue,
San Francisco, Cal.

“Sir:

“Today towards evening we are ready to leave and I believe that it would be well to send you this letter in order to explain to you better than by means of a telegram the things that have happened since we have arrived in Mazatlan.

“We arrived here Monday morning at 3:00 o'clock and were anchored as best we could in the Bay of Mazatlan because here there is no port or rather there is no wharf. Later on in the morning when the customs officials came on board and inspected the documents, the Captain only was permitted to go ashore in order to despatch the business connected with the boat. In view of the fact that I was not able to go on shore with him, I requested him to send the telegram asking the sum of \$3,000, which at that moment I considered sufficient to pay the expense of the coal which here costs \$29.00 a ton in addition to other loading charges, which loading is done entirely by men who belong to the union and who load only the amount of coal which the union designates, and in any event they will not work for less than 3 Mexican pesos an hour.

“In the meantime the day passed and after dinner I obtained permission to go ashore with the Captain, and the first thing I did was to send a telegram

confirming the one sent by Hagen precisely, because having understood that he had sent the telegram in his own name, you naturally would not send the money. That being done and believing that you would thus understand, I then went to see the agent and the Consul to make necessary arrangements, and then returned on board.

“In the meantime the railroad company, which is the only concern here that has coal, informed us that they would not begin the work of loading the coal on the launch until the money had been paid to their representative here. The carbon must be taken from the warehouse belonging to them which is located [92] about 9 miles from where our boat is anchored, which place, like all of the Bay of Mazatlan, is a very bad place at night-time, so much so that all of the ships which arrive here during the night remain in the open sea until daybreak, because of the dangers of the port itself.

“We waited the entire day of the 6th without any news, which we anxiously awaited in order to enable us to leave as soon as possible.

“On the 7th a fire broke out in the ship’s coal bunkers, a fire which was caused by spontaneous combustion on account of some water having entered into the bunkers during the terrible storms which we have here so often. They did the best they could to take about 35 tons of coal from the bunkers, but the gas which, was developed from the fire became so strong and unbearable that the men could not breathe and they were obliged to have re-

course to the pumps to throw water on the bunkers and use their pumps to pump it out again. But the fire, notwithstanding all this water, did not diminish. On the contrary, removing the coal allowed the air to penetrate better and consequently the coal burned stronger than before and continued to produce even more gas.

“It was finally decided to call the Captain of the Port and Lloyd’s Agent, and also an agent, for their advice. They immediately came on board and advised us to call for help from shore and to do everything needful as soon as possible, otherwise the boilers might blow up and the ship entirely destroyed. We took their advice and sent for all the men we could get from the shore, who set to work with the members of our crew and worked with all possible speed and energy during the entire night to save the ship. We then took a few hours of rest and on the morning of the 8th the men were called on board from shore as well as the members of our own crew and recommended their work and continued working with much energy until 5:00 o’clock in the evening, at which hour the men who came on board from the shore returned to the city and our own crew continued to work by themselves.

“On the morning of the 9th the flames began to subside, and by throwing water on the coal towards noon on the 9th the fire was completely under control and the ship’s bunkers then contained very little coal indeed, which [93] was pulled up to the deck in sacks, which sacks we were obliged to

buy, and the carbon was heaped together on the deck with the rest of it.

“The result of the fire was that the bottom of the ship’s bunkers, being made of wood, was two-fifths burned away. A lead pipe for carrying water was also burned together with other minor inconveniences, all of which was repaired by the crew, and when the marine insurance agent came on board a second time to inspect the ship, and the damages caused, and the work done, he expressed himself as highly satisfied with everything.

“In the meantime I had received your telegram asking \$4000 instead of \$3000 on account of the accident which had befallen the ship above described. Afterwards I received notice from the bank that they had an order to pay me \$3500. I at once went ashore with the Captain and the English Consul, received the money, opened two accounts with the same bank, one in Mexican pesos and one in dollars; I had with me enough money to pay for the carbon; also went to finish buying other articles and afterwards went to see the coal bunkers and promised a small tip to the superintendent if he would handle the job of loading the coal promptly and well.

“On the 10th I received another telegram saying that you had sent me 7 telegrams and asking a reply to each of the 7. I am satisfied I answered every telegram that I received, because as you can easily understand, as I myself understood, that because of an unfortunate combination our various telegrams

had crossed each other on their way and for that reason I thought it was a waste of time and money to do any more telegraphing.

“I have dated this letter in advance, dating it tomorrow, because I will not be able to post this letter. However, I expect to write you again when we get to sea on the evening of the 10th, but in this moment every thing is going along nicely on board.

“I am endeavoring in every possible way to work for your interest in everything, and when we arrive I want you to ask anybody on board if in their [94] opinion whatever I have done on board has not been done in perfect good faith, and if I have not done everything on board possible to protect your interests. The insurance agent has assured me that all the expense in connection with fighting the fire will be repaid to us by the insurance company. The work of loading the coal will commence tomorrow, Monday the 11th of August at 7 in the morning, and I firmly believe that by midnight on that day all will be loaded and everything all right. The provisions will also arrive during the morning, so I am not in a position to tell you precisely the hour of our departure. We have calculated that in order to arrive at the point designated it will take us eight days, but in case we are favored with good weather or favorable winds we will be able to make the trip in $7\frac{1}{2}$ days, so that leaving Mazatlan Monday night we ought to be at the post designated on the 18th of this month, after dinner, always understanding that no unfortunate accident occurs.

“I beg of you when you come on board, or send on board, to send us the precise hour, or in nautical terms that which they call Greenwich mean time. I make this request because the Captain says the chronometer we have on board is not much good. The Captain also asks that you buy for him a sextant made by Heath, possibly a second hand one, because the one he has has been injured by the water and is not in good condition.

“After we pay all the expenses, if there is money enough left, I think it will pay us to make another return voyage.

“When you come on board do not forget to bring the mail, and if there is not any, if you want to do me a grand favor, send to the postoffice on 7th street and ask if there is any mail for me and if so, bring it along with you.

“I will not tell you now everything that happened to us during the voyage, especially in Cuba and Panama, but I will tell you all about it and other very interesting things when we see each other. I think it is better that I not say any more but I will tell you all about it when I see you.

“I have already advised you that from the shipload some cases have disappeared for several reasons.

“With cordial regards to everybody.” [95]

TESTIMONY OF FRANK H. RIVERS, CALLED
AS A WITNESS FOR THE UNITED STATES.

FRANK H. RIVERS, a witness called on behalf of the United States, being duly sworn, testified as follows:

I am an immigration inspector and was present on the Steamship "Brookings" when the "Giulia's" crew was brought in the Bay. At that time the crew was polled and the names were called off by Captain O'Hagan, one of the defendants here. The crew consisted of the following persons: Ramiro Basterrechea Regueiro, Jesse Leroy Daniell, Augustus Rodney, Robert Castagno, Crestino Massimo, Giuseppe Mancardi, Jose Abellon, Manuel Sanches Novo, Juan Bermudez, Antonio Diar Rilo, Manuel Consuelo Gonzales, and William Blackmore, and John O'Hagan. The crew were at that time in the custody of the immigration authorities. I heard afterwards they were turned over to the United States Marshal.

Cross-examination.

From the time I took charge of the Captain and members of the crew they were in the custody of the Immigration Department.

TESTIMONY OF LAWRENCE A. HANSON,
CALLED AS A WITNESS FOR THE
UNITED STATES.

LAWRENCE A. HANSON, a witness called on behalf of the United States, being duly sworn, testified as follows:

(Testimony of Lawrence A. Hanson.)

I am the Purchasing Agent for the Los Angeles Shipbuilding and Drydock Corporation, and have been connected with that company for four years. I saw the defendant Campanelli in April or May of 1924. He was with Mr. McMillan. At that time I had a conversation with Mr. McMillan and Mr. Campanelli was with him. Mr. McFee and Mr. Hiefield and Mr. Caverly and myself owned the "Frontiersman." Mr. McMillan was the purchaser of the vessel and Mr. Campanelli entered into negotiations later on. [96] Two final payments were made on the boat by Mr. Campanelli. The first payment of \$300.00 was made by Mr. McMillan. [97] March 12, 1924. The second payment of \$500.00 was made by Western Union money order on March 13th. The third payment was with a \$4,500.00.00 check drawn on a San Francisco bank on March 21st, signed G. Campanelli. The fourth payment was by \$5,000.00 upon a San Francisco bank, signed G. Campanelli. The captain who took possession of the vessel later was Captain O'Hagan, one of the defendants in this case.

Cross-examination.

Mr. McMillan negotiated the purchase of the boat from me and my associates, and a contract of purchase was entered into by McMillan and the first payment made by him in cash. Mr. Campanelli did not deliver me the money order on the second payment. I do not know that he mailed it. He was present in the room when the \$4,500.00 check signed G. Campanelli was made out and also

(Testimony of Lawrence A. Hanson.)

the \$5,000.00 check. I cannot state whether Mr. Campanelli delivered the check to me or to one of my associates, but he was present when the checks were signed. We assigned our interest in the boat to Mr. McMillan and Mr. Campanelli. We did not execute the bill of sale inasmuch as the title was never transferred. The bill of sale was made in the name of the Los Angeles Shipbuilding and Drydock Corporation. When we received the \$4,500.00 payment we acknowledged receipt of the payment from G. T. McMillan, 1126 Bush Street, San Francisco. The option to purchase the vessel was given to Mr. McMillan. We assigned our interest in the vessel to Mr. G. Campanelli and Mr. McMillan; it was a joint assignment. The execution of the bill of sale was made in the name of the Los Angeles Shipbuilding and Drydock Corporation to Mr. McMillan and Mr. Campanelli.

I and my associates conversed with other prospective purchasers. One of the other prospective purchasers was a Canadian. Negotiation for the purchase of the vessel began March 12, 1924, and the deal was consummated April 17, 1924. None of the other defendants here participated in the purchase of the vessel. I did not see the defendant [98] De Maria before the beginning of the trial of this case. [99]

TESTIMONY OF IGNACIO ALIOTO, CALLED
AS A WITNESS FOR THE UNITED
STATES.

IGNACIO ALIOTO, a witness called on behalf of the United States, being duly sworn, testified as follows:

I am a fish dealer. I know the defendant Campanelli. I saw him on or about September 13th or 14th in 1924, and had a conversation with him. On or about the 8th or 10th of September Mr. Campanelli hired my boat called the "Nat" to bring provisions to a big boat outside. Nothing was said then about bringing in any liquor. A few days afterwards I found he had used the boat to bring in some liquor and I told him to use it for liquor. I never went out on the boat. I received \$2,500.00 on account of bringing in the liquor. I was supposed to receive \$3.00 a case. Mr. Campanelli never mentioned the name of the boat that was outside. I received the money *for* Mr. Campanelli at 17 Columbus Avenue in this city. He still owes me a little over \$2,000.00.

Cross-examination.

I have not been indicted in this case and no charge has been placed against me. I did not deliver my boat to Mr. Campanelli. The captain of my boat took it out. I did not see Mr. Campanelli take the boat, nor did I see Mr. Campanelli load any liquor upon the boat, nor did I see any liquor on the boat whatever. I do not know where

(Testimony of Ignacio Alioto.)

the boat was taken. I do not know whether it went outside the Bay. My boat was seized by the United States Government. I now have the boat. It was released to me on bond. No one interviewed me with reference to my testimony.

Q. Did you discuss your testimony with any agents of the Government? A. No.

Q. Did you interview any of the agents of the Government? A. No.

Q. Do you know Mr. Creighton?

A. Yes. [100]

Q. Did you ever discuss the case with him?

A. After I talked to Mr. Morris, Mr. Morris sent me to Mr. Creighton, and told me to tell the truth, what I know, and I did.

Q. Then you have discussed your case with a Government agent, namely, Mr. Creighton?

A. Yes.

Q. Was your boat under seizure at the time you first went to see Mr. Creighton? A. Yes.

Q. After you saw Mr. Creighton, and made a statement, you got your boat back, it was released on bond, was it not?

A. After about two or three weeks; yes.

Q. When you saw Mr. Creighton, Mr. Alioto, did he offer you any inducement to make your statement? A. No.

Q. You just came in there and said, "I want to make a statement to you?"

A. Mr. Morris told me to go to Mr. Creighton,

(Testimony of Ignacio Alioto.)

and tell him what I knew, and I went to Mr. Creighton and I told him what I knew.

Q. You told him that you had rented your boat for the purpose of transporting liquor, did you?

A. I told Mr. Creighton first that Mr. Campanelli came to me and he wanted the boat to bring the provisions on board, and finally to bring some coal, and then the liquor.

Q. You told him that you were giving the boat for the purpose of transportation of liquor?

A. Yes.

Q. Did he offer you any immunity for your testimony? A. No.

Q. Did anybody? A. No.

Q. But you have not been indicted in this matter.

A. No.

Q. Do you expect to be?

A. I don't know. The \$2,500.00 in money I received I gave to the two men on the boat. I know a man named Mac—not McMillan. I do not know whether any [101] liquor was actually transported. There were two men on my boat. The captain of my boat has not been arrested as far as I know, but I took the captain along with me at the time I saw Mr. Creighton, and also the deckhand. Neither the Captain nor the deckhand of my boat have been sent to Angel Island. I did not have any conversation with any of the other defendants about bringing in liquor. I know Mr. De Maria for ten or fifteen years. Mr. De Maria did not ask me to take any provisions out in my boat to the "Giulia," or

(Testimony of Ignacio Alioto.)

any other place, nor did he ask me to land any liquor from the "Giulia" or any other boat. The Captain of my boat is still in my employ and is still operating the boat.

Redirect Examination.

I paid the two men on my boat \$1,600.00 of the \$2,500.00 that I received, and I kept the balance myself.

TESTIMONY OF PABLO HERMAN, CALLED
AS A WITNESS FOR THE UNITED
STATES.

PABLO HERMAN, a witness called on behalf of the United States, being duly sworn, testified as follows:

I live on Filbert Avenue. In September 1924 I was the captain of the boat "Nat," and was working for Mr. Alioto, the witness who has just left the stand. I took some provisions out in the boat, consisting of potatoes, vegetables, and bread. I went about two hours outside the Farallone Islands to the boat called "Giulia." I saw Captain O'Hagan of the "Giulia." He is here in the courtroom. I also took 150 sacks of coal out to the "Giulia," at approximately the same time and the same place. I brought liquor in three times, between 400 and 500 cases each load. I had my deckhand with me. Mr. Campanelli went out with us on the first trip when we took the provisions. My deckhand and some of the crew of the "Giulia"

(Testimony of Pablo Herman.)

unloaded the provisions. I personally did not have the orders for bringing in the liquor. My deckhand, Salvatore [102] Alioto, had the orders. I do not know to whom he delivered the orders. The crew of the "Giulia" assisted in loading the liquor.

Cross-examination.

On the trip that Mr. Campanelli accompanied us we came back with an empty boat. No liquor whatever was brought in on that trip. I have not been indicted or charged with any violation of the law for taking the coal out. I did not take any the liquor in and landed it in South San Francisco. My employer, Ignacio Alioto, did not pay me any money. He did not give me \$1,600.00 or any such sum. My deckhand may have got it, I never did. I never received any and borrowed \$100.00 from Alioto at one time. That is all the money I ever got.

TESTIMONY OF M. G. STURDEVANT,
CALLED AS A WITNESS FOR THE
UNITED STATES.

M. G. STURDEVANT, called on behalf of the United States, being duly sworn, testified as follows:

In September, 1924, I was master of a motorboat called the "Shark" in San Francisco Bay. On or about the 15th day of September 1924 I took 75 tons of coal out to the boat "Giulia" in the motorboat "Shark." When I first saw the "Giulia" it

(Testimony of M. G. Sturdevant.)

was near the Cordell Banks. I think the man here called Captain O'Hagan was the man I saw on the "Giulia." I did not deliver the coal to the "Giulia" at that place because it was too rough. We told them to come in behind the lee of Pt. Reyes. The bay is called Drakes Bay. I would say we delivered the coal to the "Giulia" at approximately a mile from the shore, but the Point runs down and we possibly might have been 500 or 600 yards from Pt. Reyes. We got coal from over in Oakland I do not remember the company. We did not bring in any liquor. I saw a man by the name of Adolph, with reference to payment for the coal. He went to the captain of our boat first [103] and the captain brought him up to me and said that this man wanted to take a load of coal to a boat in distress outside. Adolph and a man I think they called Mac then made the arrangements for the coal. I received full payment with the exception of \$78.00. I am not sure whether I received the money from Adoph or Mac. The payments were made in an automobile on Columbus Avenue. I went up to 15 or 17 Columbus Avenue with reference to the payment.

Cross-examination.

The only thing I took out was coal. I have not been indicted or charged with any violation of the law for taking the coal out. I did not take any provisions out and took no liquor back. I do not know the defendant DeMaria.

TESTIMONY OF F. J. THOMPSON, CALLED
AS A WITNESS FOR THE UNITED
STATES.

F. J. THOMPSON, a witness called on behalf of the United States, being duly sworn, testified as follows:

I am the manager of Spreckels Bros., San Diego, and occupied that position in September 1924. On September 2, 1924, I met the defendant DeMaria and had a conversation with him relative to some coal. Mr. Beermaker was present. Mr. Beermaker called me up and I went over to his office and met Mr. DeMaria. Mr. Beermaker introduced me to Mr. DeMaria and said, "Now this is the gentleman. He says he has a boat in distress down in Mexican waters. He says that he calls her the 'Giulia,' but he says you never recognize it by the way they spell it." Mr. DeMaria wanted 75 tons of coal and I wanted the money before the coal went on the boat, because it was to be delivered in Mexican waters. He said he wanted it in 100 lb. sacks so he could handle it on and off the boat. I procured 35 tons of coal, which was all the coal I could get, and delivered it to Mr. Beermaker. [104]

Cross-examination.

I do not believe Mr. Beermaker left the office to go to the Custom-house while I was there. I supplied 35 tons of coal at \$15.50 a ton and received \$542.50. The money was turned over to me by Mr. Beermaker. Mr. Beermaker owned the boat that took the coal to Ensenada and he was in charge of

(Testimony of F. J. Thompson.)

the transportation. I did not know that there was liquor on the boat. As I remember it Mr. DeMaria gave his full name and did not try to conceal his identity.

TESTIMONY OF SALVATORE ALIOTO,
CALLED AS A WITNESS FOR THE
UNITED STATES.

SALVATORE ALIOTO, a witness called on behalf of the United States, being duly sworn, testified as follows:

I am a fisherman. In September 1924 I was working for Ignacio Alioto on his boat called the "Nat." I went with Captain Herman of the "Nat" alongside the "Giulia". The "Giulia" was west of the Noonday Rock, near the Farallones. I know defendant Campanelli. The first time I met him was here in San Francisco aboard the ship "Giulia."

Q. Did he go out with you or come back with you on the "Gnat?"

A. No, he went out, but he didn't come back with us.

Q. Did you leave him on the "Giulia?"

A. Yes, sir.

Q. What did you bring back from the "Giulia?"

A. Whiskey.

Q. On how many trips did you bring whiskey in from the "Giulia?" A. Three trips.

Q. Did Mr. Ignacio Alioto pay you for bringing this liquor in? A. Yes, sir.

Q. How much?

(Testimony of Salvatore Alioto.)

A. \$1500; I want to make an explanation in regard to that money. [105]

A. (Continuing.) I am explaining that he gave me the \$1500, and at the end of my work if there was any money coming to me he was to pay it to me, and if I owed them I would pay them.

The COURT.—Q. Who gave him the \$1500?

A. Ignacio Alioto.

Q. He is the man who testified yesterday?

A. Yes.

Q. He is the man who owned the boat?

A. Yes.

Cross-examination.

I am not related to Ignacio Alioto. I was working on the deck of his boat. The captain was Pablo Herman.

Q. And on the first trip out to the boat Mr. Campanelli went with you; is that the fact?

A. Yes, sir.

Q. What did you take out to the boat on that particular occasion?

A. The first time we brought coal.

Q. You brought coal? A. Yes, sir.

Q. Are you sure it was not provisions?

A. I believe it was the second time that we brought the groceries.

Q. Are you sure that you did not bring groceries out on the first trip? A. I can swear to it.

Q. Then you are not sure that you brought coal out the first trip?

(Testimony of Salvatore Alioto.)

Mr. GILLIS.—I think he just answered that, may it please the Court.

Mr. TULLY.—This is cross-examination, your Honor.

The COURT.—Let him answer.

A. I am sure that we brought coal.

Q. You are just as sure of that as you are of any other portion of your testimony?

A. Yes, sir.

Q. On your first trip out to the boat, did you bring [106] any liquor back? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Was Captain Herman on the boat at that time? A. Yes, sir.

Q. Is it not a fact that on the first trip out there you came back with an empty boat?

A. I can say that we took the trip.

Q. Can you say definitely whether you brought liquor back on the first trip, or whether you came back with an empty boat?

A. I can't swear to a lie. I am telling you what I remember.

Q. Then you don't remember with reference to the first trip, as to whether you brought any liquor in, or not?

A. I can only tell you what I remember. I can't tell you what I can't remember and I don't want to tell a lie.

Q. Well, think it over, then.

A. I believe that we went aboard the "Giulia"

(Testimony of Salvatore Alioto.)

and that we came back to get the coal, and then went right back with the coal.

Q. Let me ask you this question: If the captain of that vessel stated that you went out with provisions the first trip, and came back with an empty boat, the captain is mistaken, then, is he?

A. I can only answer that in this way, that if the captain testifies one way and I testify the other way, of the two of us one must be mistaken.

Q. On this first trip out, on which Mr. Campanelli went with you, did you bring him back in the boat with you? A. Yes, sir.

Q. He came back in the boat with you? [107]

A. Like I have told you, Campanelli went out aboard the boat with us, and they were short of coal, and we turned right around and came back to get the coal, and he came back with us, and when we returned with the coal he stayed on land.

Q. However, you recall, though, that Mr. Campanelli went out with you on the first trip?

A. Yes.

Q. Do you recall him going out on any other trips? A. No.

Q. Then how did you leave him on board the ship? A. Who?

Q. Campanelli?

A. I can tell you again, that when we went out alongside of the "Giulia" Campanelli was aboard the boat with us, and when we got out there they told us they were short of coal, and we turned around and came back to the city. He was aboard

(Testimony of Salvatore Alioto.)

with us. We got our coal and started back, and when we returned to the "Giulia" he was not aboard the boat.

Q. In other words, then, you did not leave him on the "Giulia," as you testified on your direct examination?

A. I am telling you again that I am telling you exactly what I know and what I recall.

Mr. TULLY.—Q. In other words, you did not leave Mr. Campanelli upon the "Giulia"?

A. No.

Q. When you went out to the "Giulia" on this first trip and you turned around and came back, did you have any liquor on board when you turned around and came back? A. No, sir.

Q. There was no liquor on board, then?

A. No, sir.

Q. Have you been arrested in this case?

A. No, sir.

Q. No charge has been placed against you?

A. No, sir. [108]

Q. This \$1500, that money was paid to you by Mr. Alioto, your employer, was it not?

A. Yes. That was not the complete payment; I told Mr. Alioto that I needed a little more money than was coming to me and if he could give that money to me that when Campanelli finished paying Alioto then he and I could square up.

Mr. TULLY.—Q. Are you sure that the sum was not \$1600?

A. No, I can say it was \$1500.

(Testimony of Salvatore Alioto.)

Q. The sum was \$1500? A. Yes.

Q. Did you pay any of that money to the captain of the vessel? A. No, sir.

Q. You kept all of the money, yourself?

A. Yes, sir.

Q. You didn't pay any portion of it to anybody else? A. No, sir.

Q. Did Mr. Alioto tell you to go and bring that liquor in? A. Yes, sir.

Q. You received your orders, did you, from Mr. Alioto? A. Yes, sir. [109]

TESTIMONY OF FRANK LANDL, CALLED
ON BEHALF OF THE UNITED STATES.

FRANK LANDL, a witness called on behalf of the United States being duly sworn, testified as follows:

I do not know who I was working for in September of 1924. I couldn't say. I cannot say that I was working under any definite person. I know a man by the name of Lenhart. I do not know whether I was working for him, or not. Mr. Lenhart paid me. I was working on a small boat No. 3569. I went out to the "Giulia."

Mr. TULLY.—For the purpose of the record, your Honor, may we have our formal objection to this, that it is immaterial, irrelevant and incompetent, and the proper foundation has not been laid?

The COURT.—All right. . . .

The "Giulia" was out near Noonday Rock, about

(Testimony of Frank Landl.)

an hour and a half trip. I recognize captain O'Hagan here in Court as being the captain of the boat. I brought back a load of liquor from the "Giulia,"—approximately four loads, with about 300 cases to the load. On one occasion I saw the defendant, Campanelli on the "Giulia." I saw the defendant, De Maria on Montgomery street. Part of the liquor was landed at Lamatong Bay, and the rest above Point Bonita. I was not out on the C 808. I was paid \$50. a trip. I saw Henderson and he made a trip with us out to the "Giulia."

TESTIMONY OF GEORGE W. BEERMAKER,
CALLED ON BEHALF OF THE UNITED
STATES.

GEORGE W. BEERMAKER, a witness called on behalf of the United States being duly sworn, testified as follows:

I am a customs broker at San Diego, In September, 1924 I saw the defendant, De Maria, and he asked me to procure him [110] some coal which I did through Mr. Thompson of the Spreckels Bros. Commercial Co. I procured 35 tons of coal for him and they were delivered by Captain Richardson, on board my boat "Gryme." DeMaria deposited with me two \$500 bills. The total amount of the bill was \$815, and I gave him a check for the balance.

(Here the Government offered in evidence the check and it was marked U. S. Exhibit 8.)

(Testimony of George W. Beermaker.)

Cross-examination.

At the time Mr. De Maria asked me for the coal I know I went across to speak to the authorities at the Customs-house, and asked them if it would be lawful for me to take the coal to Ensenada, Mr. De Maria did not say that he did not want a check. He dealt with me like any other customer. He did not say he wanted the transaction to be a secret transaction.

TESTIMONY OF JOHN RICHARDSON,
CALLED ON BEHALF OF THE UNITED
STATES.

JOHN RICHARDSON, a witness called on behalf of the United States being duly sworn, testified as follows:

In September, 1924 I was working for Mr. Beermaker. I was the captain of the "Gryme." At that time I delivered coal to the "Giulia" in Ensenada; approximately 35 tons. I took the coal from San Diego under Mr. Beermaker's instructions. One or two days prior to delivering the coal I had a conversation with Mr. De Maria in Ensenada, in Tom Quinlan's saloon. Tom Quinlan introduced me to Mr. De Maria and said, "He is an old friend of mine from 'Frisco,' he is a good square fellow, give him anything he wants." Quinlan did all the talking. We had a drink or two, and Mr. De Maria did not say much of anything about the "Giulia."

(Testimony of John Richardson.)

Cross-examination.

We were drinking at the bar with Mr. De Maria. De Maria did not say he had any interest in the boat.

TESTIMONY OF B. W. GRABLE, CALLED ON
BEHALF OF THE UNITED STATES.

B. W. GRABLE, a witness called on behalf of the United States being duly sworn, testified as follows:

Mr. GILLIS.—Q. Your position is what, Mr. Grable? A. Secretary of the King Coal Co.

Q. *Where* you secretary of the King Coal Co. in December, 1923? A. I was.

Q. I show you an instrument and ask you if you recognize that, Mr. Grable? A. Yes.

Q. What is that, Mr. Grable?

A. It is a receipt that we give, or rather, take from people who take coal from our bunkers at our Oakland plant.

Q. That is a receipt that was given for coal delivered to what steamer?

A. The steamer "Mae Heyman."

Q. The date is December 5, 1923? A. Yes.

Q. Do you know of your own knowledge that coal was delivered from your dock to the "Mae Heyman"? A. It was—

Mr. TULLY.—Just a minute. At this time we will object on the ground it is immaterial, irrelevant and incompetent. I cannot see what the purpose of this is at all. . . .

Mr. TULLY.—It does not tend to prove any of the allegations of the indictment. . . .

The COURT.—It is offered against McMillian and Henderson, alone?

Mr. GILLIS.—No. The act of one co-conspirator is the act of all. [112]

The COURT.—You would have to show that these other people were partners in this conspiracy at that time. About when was this? This was in 1923, was it not?

Mr. GILLIS.—This was December 5, 1923.

The COURT.—We have not had any evidence up to this time connecting them with the transaction in December, 1923. . . .

Mr. GILLIS.—This is a bill dated December 5, 1923, showing a delivery of coal to the “Mae Heyman.” This is for the purpose of connecting these defendants with the “Mae Heyman.” But the “Mae Heyman” was seized on April 10, 1924, after the “Frontiersman” had been sold to the other defendants.

The COURT.—I think it would be competent against McMillan and Henderson, but I do not see how it would be against the other parties.

Mr. TULLY.—The situation is this, they are charging a specific conspiracy here in this indictment, and they are limited to proving that conspiracy.

The COURT.—From and after January, 1924.

Mr. TULLY.—Absolutely, and they cannot introduce as an overt act anything that precedes the

conspiracy which they lay here; in other words, you cannot have an overt act preceding the conspiracy, it must follow.

The COURT.—This is not one of the overt acts alleged in the indictment?

Mr. GILLIS.—No; the date of the conspiracy in the indictment is January, but we are not bound specifically by that date. We show that a conspiracy begins in the fall of 1923. Now, as a part of that conspiracy there was owned by these two conspirators, that we are able to show, the “Mae Heyman,” and we show the ownership of that boat, and the control of that boat through these coal [113] bills at that time, and then we come on down into March of 1924, and at that time we have the sale of the “Frontiersman,” which is the “Giulia”; that was in March. Now, in April, a month later, the “Mae Heyman” was seized. Now, at the time the “Mae Heyman” was seized, we could not present evidence as of April 10, at that time, as to the ownership of the “Mae Heyman,” because Henderson and McMillan were not aboard the “Mae Heyman,” and all that were arrested and seized on the “Mae Heyman” were the crew, and the men who actually and physically handled the liquor; but we do show the connection of the conspirators with the “Mae Heyman” and the liquor business, and it was seized after the “Frontiersman,” the “Giulia,” had been purchased by these conspirators.

Mr. TULLY.—May I direct your Honor’s at-

(Testimony of B. W. Grable.)

tention to the indictment, itself? The indictment lays the conspiracy as having occurred in San Francisco Bay on the 1st day of February, 1924.

. . . .

The COURT.—I think it is competent as against McMillan and Henderson.

Mr. TULLY.—May we reserve an exception?

The COURT.—Whether the other people are bound by it would depend upon what the evidence shows was their connection with the conspiracy, if they were connected with it at all.

Mr. GILLIS.—I ask that it be introduced in evidence and marked Government's exhibit next in order.

(The document was marked U. S. Exhibit 9.)

Mr. WILLIAMS.—May the objection and exception taken by Mr. Tully apply to all defendants?

The COURT.—Yes.

Mr. GILLIS.—Q. Do you remember on December 5, of a payment to your company?

A. There was one made, yes.

Q. Do you remember approximately what that was? A. \$390 odd.

Q. How was it paid?

A. It was brought into the office in currency by a young lady. [114]

Q. You don't remember the young lady?

A. No, I do not.

Q. Do you remember whether you made deliveries of coal to the "Mae Heyman" after this date? A. We did.

(Testimony of B. W. Grable.)

Q. How late a date?

A. Into January, the latter part of January.

Q. 1924? A. 1924.

Cross-examination.

I do not know, personally, whether this coal was delivered. I did not see it delivered. A young lady paid the bill for the coal. She brought the money to the office. I do not know Mr. McMillan nor do I know Mr. Henderson. I don't know any of the defendants here. They did not pay it.

Mr. TULLY.—We move to strike out all of this testimony as immaterial, irrelevant and incompetent, and based on hearsay.

The COURT.—A young lady who has been on the stand testified that she made the payment.

Mr. GILLIS.—Yes.

The COURT.—She was working for these other people, McMillan and Henderson.

Mr. TULLY.—May we have an exception?

The COURT.—Yes.

Mr. WILLIAMS.—As I understand the ruling of the Court it is that in view of the young lady's testimony this evidence is admissible against Henderson and McMillan?

The COURT.—As against Henderson and McMillan.

Mr. WILLIAMS.—The jury will understand it is not admissible at this time against any of the others? . . . [115]

TESTIMONY OF JOHN L. BENSON, CALLED
ON BEHALF OF THE UNITED STATES.

JOHN L. BENSON, a witness called on behalf of the United States being duly sworn, testified as follows:

I am the superintendent of the King Coal Co. I was such in December and January, 1923 and 1924.

Q. As foreman of the King Coal Co., did you supervise the delivery of any coal to the "Mae Heymen"?' A. Yes.

Mr. TULLY.—We make the same objection.

The COURT.—All right.

Mr. TULLY.—And take an exception.

A. Yes.

Mr. GILLIS.—Q. Do you know of your own knowledge that the coal was actually in those two months delivered to the "Mae Heyman"?'

A. Yes.

Cross-examination.

I delivered the coal to the vessel. The "Mae Heyman" was alongside our dock when I delivered the coal. It had no cargo on board. I do not know who paid for the coal. I do not know whether the "Mae Heyman" changed ownership in the meanwhile. [116]

TESTIMONY OF ALF OFTEDAL, CALLED
FOR THE UNITED STATES.

ALF OFTEDAL, a witness called on behalf of the United States, being duly sworn, testified as follows:

Mr. GILLIS.—Q. Your position with the Government is what, Mr. Oftedal?

A. Special agent in charge, Bureau of Internal Revenue, Treasury Department.

Q. Did you see the defendant, Campanelli, on November 5, 1924? A. Yes.

Q. Did you have a conversation with him at that time? A. Yes.

Q. Did you take a statement from him at that time? A. Yes.

Q. Was that statement taken down in writing?

A. It was.

Q. Was it sworn to? A. It was.

Q. Were there any inducements or promises offered to Mr. Campanelli at that time?

A. None, whatever.

Q. Were there any threats or anything of that nature made against him? A. No.

Q. Have you that statement? A. Yes.

Mr. TULLY.—What was the date of that statement?

Mr. GILLIS.—November 5. A copy of that statement was given Mr. Campanelli at the time, was it not? A. Yes.

Mr. GILLIS.—Do you wish to look at it?

MR. TULLY.—Yes.

MR. WILLIAMS.—If your Honor please, this statement and other statements were furnished to us by Mr. Gillis the other day, to save time. There is a reference in this statement to Mr. De Maria, that is in the statement of November 5, after the arrest of Campanelli, and, under the ruling of the Court, it is not admissible against any of these alleged conspirators except Campanelli, himself; it is a long statement.

THE COURT.—You mean Campanelli's statement?

MR. WILLIAMS.—Yes. Would your Honor at this time, in fairness to the other defendants, reinstruct the jury on the question of law, so they will have it before them when this statement is read?
[117]

THE COURT.—I should think the jury understands that. I have tried to make that clear to them. After this conspiracy, if there was a conspiracy, terminated, then the declarations of one of the alleged conspirators as to what occurred previously in connection with somebody else to the transaction would not be evidence against the other party. You can readily understand that after a man is arrested for a crime, he might want to connect a most innocent man by making up some statement, and in order to protect that kind of a man, the law says that such a statement is evidence against the man who makes it, but not to connect the other people with it.

(Testimony of Alf Oftedal.)

Mr. GILLIS.—I will ask you now to read the statement, Mr. Oftedal.

Mr. TULLY.—At this time I object on the ground that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid, in that it has not been shown that the statement was obtained freely and voluntarily.

The COURT.—Oh, yes, that has been shown.

Mr. GILLIS.—The witness testified that it was freely made and no promise made.

Mr. TULLY.—May we cross-examine at this time?

The COURT.—Certainly, you can if you want to.

Mr. TULLY.—I mean with reference to whether this was free and voluntary.

The COURT.—With reference to this particular statement?

Mr. TULLY.—Yes.

The COURT.—You may.

Mr. TULLY.—Q. Does this statement embody your entire conversation in regard to the matter discussed in here?

A. No; there was quite a bit of conversation aside from that.

Q. It does not embody everything?

A. Not everything that was said there, no.

The COURT.—I did not understand that you were to cross-examine as to the contents of the statement.

Mr. TULLY.—No; I wanted to find out whether it is the whole conversation, that is all. [118]

(Testimony of Alf Oftedal.)

The COURT.—You can find that out on cross-examination, if that is all you want to find out.

Mr. TULLY.—No, I want to find out whether he made any promise before, or whether this was the entire conversation.

The COURT.—Ask him about the promise; that is all we are concerned with now, and ascertain whether this was free and voluntary.

Mr. TULLY.—Q. What did you say to Mr. Campanelli with reference to making this statement?

A. I questioned him carefully as to all the facts connected with this “Giulia” case, different things that I considered material, and then—

Q. (Intg.) What was the first thing you said to him when he came in?

A. When he came in he was brought in by his friend, a man named Guido Braccini, who had previously made overtures to me with regard to the fixing of a bond; that is, at that time Campanelli was a fugitive from justice, and his friend Braccini came in, offering to produce him, and I let Mr. Braccini know that I would be glad to talk to Mr. Campanelli, but, of course, he was wanted by the Court; and after conferring with the United States Attorney about it, I suggested that Braccini bring Mr. Campanelli in and his bond would be fixed at about \$2500. Then when he came into the office no promises of any kind were made.

The COURT.—Q. What did you say to him about that? A. About the bond?

(Testimony of Alf Oftedal.)

Q. No, about making a statement.

A. I asked him if he was willing to make a statement, and he said he was, and I questioned him in the presence of Mr. Braccini.

Q. Was there anything said to him about the statement?

A. I said to him, to begin with, what, in substance, I understood the facts to be.

Q. I mean what did you tell him about the statement? Did you tell him whether the statement would be used against him?

A. Yes, I let him know that any statement he would make would be used against [119] him, that I could not promise him anything, whatever, for making the statement.

Q. Did you tell him he was privileged to make a statement or not, if he saw proper?

A. Yes, that he was at liberty to decline to answer any questions I might ask him, that I wanted to interview him, and, in the course of this interview, when he made statements, immediately after I understood his answers I dictated them in the presence of Mr. Guido, Mr. Campanelli, the stenographer, and myself.

Mr. TULLY.—Q. Getting back to the time he first came into the office, at that time his bond was fixed in the sum of \$10,000, was it not?

A. I believe it was.

Q. As a matter of fact, didn't you promise him, if he would make this statement, that you would reduce the bond to \$2,500?

(Testimony of Alf Oftedal.)

A. The statement had nothing to do with the bond.

Q. Just answer the question.

Mr. GILLIS.—I think he is answering.

A. No.

Mr. TULLY.—Q. You did not? A. No.

Q. What connection, if any, has this man you refer to as Guido Braccini got with your office?

A. None whatever.

Q. Do you know whether he purports to work out of your office at any time?

A. If he does so, he does so without authority of any kind.

Q. Doesn't he assist you in investigations?

A. None whatever, except he is one of those fellows from whom we occasionally obtain information.

Q. Doesn't he act as an informer for your office?

A. On a salary, no.

Q. No, I am not asking on a salary.

A. As an informer, that is not correctly stating it, because anyone that gives information, I would not call them an informer—I expect that they are informers—I would not just designate him as an informer.

Q. What is his connection in that regard with your office?

A. He is just a man with whom I became acquainted in connection with another case in which Campanelli was involved. [120]

Q. That was the Crawford case, was it not?

A. Yes.

(Testimony of Alf Oftedal.)

Q. You granted him immunity in that case, did you not?

Mr. GILLIS.—Just a minute; may it please the Court—

The COURT.—That does not involve whether that statement is voluntary or not.

Mr. TULLY.—I am trying to find out who this man Guido is.

The COURT.—You can do that on cross-examination.

Mr. TULLY.—I will pass it until that time, and reserve my right to cross-examine him then.

The COURT.—The particular inquiry now is whether or not it is a voluntary statement.

Mr. GILLIS.—Will you read the statement, Mr. Oftedal?

The witness read the following statement: [121]
November 5, 1924.

Joe Campanelli, when interviewed in the office of the Intelligence Unit, on November 5, 1924, in the presence of Guido Braccini, states

That he does not distinctly recall how he first became acquainted with Mr. Manning of the Colombo Buillion Mines Syndicate, about a year or so ago; that he did purchase several cases of whiskey, possibly fifty, from Mr. Manning, who, as he understands it, was only in San Francisco for two or three weeks.

That Manning made him acquainted with Henderson, with whom he had dealings from time to time, and at Henderson's invitation he visited at the lat-

ter's rooms in the Stanford Court Apartments, where he saw Ruth Adele Smith, whose picture he has identified and who Henderson spoke of as "Pat."

That it was Henderson who made him acquainted with Guyvan McMillan; that he got to be pretty well acquainted with Henderson, who was quite liberal with his funds and paid him sums of money at times amounting from \$50.00 to \$100.00, and on several occasions he purchased quantities of liquor from Henderson; that several months ago Henderson invited him, Campanelli, to go along on a trip to Havana, Cuba, for the purpose of obtaining liquors, and in that connection he learned that Henderson owned a ship called the "Giulia," which was being sent to Havana for the purpose of securing a cargo.

That he went along with Henderson on a trip to Havana at the latter's expense, and that Johnny De Maria joined them on this trip, which was made by train; that he (Campanelli) had no connection whatever with De Maria and as he understands it De Maria was making the trip for his own interests. Upon arrival of this party at Miami, Florida, Henderson met his wife who appeared to be living there at the Granada Apartments, and that the three men after spending about one week in Miami proceeded to Havana by the boat "Key West," where they registered at the Seville Hotel. Campanelli further states that in conversations which were had from time to time with Henderson he came to know

that a supply of liquors was being kept in storage at Havana, which belonged to Henderson, and although Johnny De Maria traveled along on this venture, he does not know to what extent De Maria was interested financially or otherwise.

He states that he stayed in Havana for fifteen or twenty days waiting the arrival of the steamer "Giulia," after which a cargo of liquors was placed on board; that the liquors which were placed aboard the "Giulia" were removed from warehouses located on what is known as the San Francisco Pier.

That Henderson seemed to have complete charge of the ship as well as her cargo; that Henderson gave him to understand that most of this liquor had been exported from Scotland where Henderson said he owned a distillery; that Johnny De Maria did not remain in Havana until the arrival of the "Giulia" but stayed in the city, as he recalls it, no longer than a week. Campanelli remained in Havana until the "Giulia" was loaded and he does not remember the date on which he left but says he proceeded to New Orleans, where he remained for two or three days. The girl, Ruth Adele Smith, *alias* "Pat" did not show up at Havana while he was there, he says, nor does he know when Henderson left there, but he is quite certain that Henderson did not [122] leave on the "Giulia." In parting with Henderson he was given instructions to proceed to San Francisco, and Henderson in referring to himself said: "I will be there before the boat gets there," or words to that effect.

Campanelli does not remember the date of his return to San Francisco, and asserts that he received no instructions at Havana with regard to making contract of any kind with the "Giulia" upon her arrival in the vicinity of San Francisco; that about twenty days or more after leaving Havana he (Campanelli) while at his own office in San Francisco at 17 Columbus Avenue, received a telephone call from Henderson, inviting him to the Clift Hotel on Geary Street. On this occasion they simply visited together in the room which was being rented by Mr. Henderson. On that occasion Henderson told him that there were about 8,500 cases of liquor aboard the "Giulia," and he would like to have Campanelli's assistance in the matter of disposing of the cargo. Henderson offered to pay him \$1.00 a case as a commission for the assistance which he had rendered or might render with regard to the disposal of these liquors, and it was figured out that he would receive at least \$8,500.00 on the deal.

Henderson stated that Alioto, a foreman for the Booth Fishing Co. of San Francisco, who had assisted in the unloading of liquors on previous occasions would help in the matter of unloading the "Giulia" and he (Campanelli) was requested to get in touch with Alioto, which he did. He states that he informed Alioto of Henderson's purpose to pay him at the rate of \$2.50 a case for every one unloaded from the "Giulia," and that Alioto agreed to arrange for bringing in liquors from the ship at

that rate; he told Alioto that Henderson expected the boat to arrive on a certain fixed date, which he does not recall at this time.

That about one week after his visit with Henderson at the Clift Hotel, Henderson met with him again and they visited together in the office on Columbus Avenue, where he was informed of the fact that the "Giulia" was down in Ensenada in need of coal and provisions and that he, Henderson, would like to have him go down there to help in any way he could to supply the ship. He says that his cousin, Ricardo Campanelli, had no interest whatever, so far as he knows, in the cargo aboard the "Giulia," but at his request Ricardo gave him a ride by automobile from San Francisco to San Diego. On the way, however, they met with an accident near the city of Los Angeles, and had to make the remainder of the trip by stage to San Diego. The trip from San Diego to Ensenada was made by automobile.

That while in San Diego he met with Johnny De-Maria, but was not informed as to the latter's business down there.

That after arrival at Ensenada, he paid a visit to the "Giulia," which was then located in the harbor, and received a sum of money from Captain Hogan, with which he purchased a supply of groceries and other provisions which were transferred to the ship by means of a launch, which was hired for the purpose. Campanelli insists that he had nothing whatever to do with purchasing any

coal for the "Giulia" nor with transporting the coal to the ship.

That after these provisions were placed aboard he boarded the ship himself and stayed on her until after arrival, about thirty miles south of the Farillone Islands; that he was seasick and was very anxious to reach shore as soon as possible, and that while the ship was lying off the islands he was permitted to go ashore in the [123] first boat which came alongside; he did not notice that the boat had any name nor does he have any means of identifying it except that he might know it if he saw it again. This launch did not remove any liquors from the "Giulia" so far as he knows, and he and his cousin Ricardo were the only passengers. They landed at Pier 17 or 21 at 5:00 or 6:00 o'clock in the evening.

That upon arrival he went to the office where he met with Henderson, who appeared to be waiting for him. In the course of this visit Henderson made inquiries with regard to the condition of the ship and the cargo and was assured that everything was alright. Henderson told him that the first lot brought ashore from the "Giulia" consisted of about 300 cases.

I, Joe Campanelli, hereby certify that the foregoing is a correct statement of the information given by me and furthermore that the statements I have made in this connection are the truth and nothing but the truth.

Signed: J. CAMPANELLI.

(Testimony of Alf Oftedal.)

Subscribed and sworn to before me this 5th day of November, 1924, at San Francisco, California.

ALF OFTEDAL,

Special Agent in Charge, Sacramento Division.

[124]

(WITNESS Continuing.)

Mr. GILLIS.—Q. Mr. Oftedal, did you have any other interviews with Mr. Campanelli, other than the one on November 5, 1924?

A. Two others as I recall.

Q. When was the next one?

A. As I remember it, early in the month of December, 1924.

Q. Was that a sworn statement that he made at that time?

A. No; that is, I questioned him orally in the presence of yourself and Mr. Creighton, and one or two others, in the office of the United States Attorney, in this building.

Q. Did you make a record of that conversation?

A. No, I did not.

Q. Do you remember what transpired at that time? A. Yes.

Q. Will you state what conversation you had with him then?

A. He had previously been questioned, that is, he was in the room when I went in, and I heard him make some answers to questions propounded to him by, I believe, Mr. Creighton; then I questioned him somewhat along the line that I had when he was over in my office previous to that time, and he just stated

(Testimony of Alf Oftedal.)

in further detail than he did when in the office, that a part of his arrangements—[125]

Mr. TULLY.—May we have the same objection to this testimony that we did to the other?

The COURT.—Yes.

Mr. TULLY.—And exception?

The COURT.—Yes.

A. A part of this arrangement that he had with this man Daniel Henderson was, he was to receive so much for each and every case delivered by the Henderson interests in California, or in San Francisco; and that his principal duty in that connection was to keep in contact with the shore boats that went out to the ship to get the liquor, and then to be at the point of delivery when a cargo was delivered at any particular residence, he would accompany the truck that made the delivery, and then he would collect from the purchaser, and he deposited these funds in the bank, or gave them direct to Mr. Henderson, either way—sometimes he said he carried large amounts of money for Daniel Henderson for days at a time; and then Daniel Henderson would arrange with him every so often to figure out how much was due as a result of the quantity unloaded from the ship “Ardenza,” as well as the “Frontiersman” and the “Giulia.” However, as far as the “Giulia” was concerned, he said that only two boatloads, as I recall it, had been delivered prior to the time that the boat was sunk, and that he had received his commission from those two de-

(Testimony of Alf Oftedal.)

liveries; he was questioned further with regard to his relations with John De Maria.

Mr. McDONALD.—We object to any statements made by this defendant concerning the defendant John De Maria, on the ground that they were made after the arrest of this defendant, and after the termination of the conspiracy, and ask that the jury be instructed to disregard them.

The COURT.—I think they understand.

A. And again he stated that Johnny De Maria had gone along with him on this trip from San Francisco to Havana, Cuba, but that while they traveled together they had no particular relations, that is, he did not pretend to know just what Johnny De Maria was going down there for, though the three of them, Henderson, [126] Joe Campanelli and Johnny De Maria traveled together on the train, and were together for several days in Miami, Florida, as well as in Havana. He was questioned, too, in detail, with regard to his association with Campanelli down here at San Diego and in Ensenada, and he said that he had seen Johnny De Maria down there.

Mr. McDONALD.—Q. Down there?

A. Down in Ensenada, as well as in San Diego. But, again, he claimed that there were no financial connections between them, and no particular relationship, so far as this deal was concerned.

Mr. GILLIS.—Is that substantially all?

A. That is substantially all of it.

(Testimony of Alf Oftedal.)

Q. Did you have any other conversation with him? A. Yes.

Q. Where was that? A. That was in my office.

Q. Was that reduced to writing? A. Yes.

Mr. WILLIAMS.—If your Honor please, just a moment; as I understand the reference to the defendant De Maria in the admissions of this particular defendant, Campanelli, are admissible to show the actions of acts of Campanelli, and not binding upon De Maria as such?

The COURT.—No.

Mr. WILLIAMS.—It is admissible with that limitation?

The COURT.—Yes, unless the jury should find that it subsequently appeared that De Maria was a party to the conspiracy, if there was one, of course this would show the association of the two together.

Mr. WILLIAMS.—But not to connect him with the conspiracy.

Mr. TULLY.—May I have the same objection to this testimony, and the same exception?

The COURT.—Yes.

Mr. GILLIS.—Q. Did he sign and swear to the statement that he last made?

A. No, he declined to; he said he had an attorney, and I asked him to take a copy of the statement over and show it to his attorney, and I said that his attorney might advise him to sign it, but he did not come back.

Q. Did you reduce it to writing?

A. Yes. [127]

(Testimony of Alf Oftedal.)

Q. Have you that? A. Yes.

Q. Using that only to refresh your memory, Mr. Oftedal, will you state what the substance of that conversation was?

Mr. TULLY.—May we see it?

Mr. GILLIS.—You have a copy of it.

Mr. TULLY.—No, I have not a copy.

Mr. GILLIS.—A copy was given to Mr. Campanelli. (Handing.)

Q. Using this to refresh your memory with, Mr. Oftedal, will you relate the conversation that you had with Mr. Campanelli at that time?

Mr. TULLY.—I suggest that the proper foundation be laid, your Honor, the time, place, and who was present.

Mr. GILLIS.—I am not impeaching this witness.

Mr. TULLY.—No, but I would like to know.

The COURT.—This is not offered for impeaching purposes. This is offered as a declaration against interest.

Mr. TULLY.—Yes, but I would like to have the proper foundation laid to know who was there.

The COURT.—What do you mean by a proper foundation?

Mr. TULLY.—I would like to have the witness state when it was.

Mr. GILLIS.—When did you make that?

A. On December 9, 1924.

Q. Was that when you had the conversation?

A. Yes.

Q. Go ahead and relate that conversation.

(Testimony of Alf Oftedal.)

A. Mr. Campanelli stated in the presence of Guido Braccini in my office at that time, and at the same time that I obtained the information from him I dictated it to my stenographer in my office, and as a result made up this memorandum for his signature, and it states in substance, that is, he said in substance that sometime in the spring of 1923—

Mr. TULLY.—I submit this is not a signed statement, and the witness should only use it to refresh his memory.

The WITNESS.—That is all I am doing. [128]

The COURT.—Go ahead.

A. At some time in the spring of 1923 he was introduced to a Mr. Manning, in the office of the Colombo Bullion Mines Syndicate, having offices down at 625 Market Street, as I recall it; that he learned from other sources that this man Manning was selling intoxicating liquors, so he, Campanelli, purchased quantities from him. He said that in all he had purchased about 50 cases of intoxicating liquor from Manning; that through Manning he became acquainted with Daniel Henderson, who also appeared there at the Colombo Bullion Mines office, and that Henderson, in turn, introduced him to Guyvan McMillan, who acted, as he said, as a sort of confidential agent or representative of Daniel Henderson. Later on he purchased liquor direct from Henderson, who was then stopping at the Stanford Court Apartments, and it was Henderson who invited him up to the Stanford Court Apartments, where they got to be better acquainted, and as they

(Testimony of Alf Oftedal.)

became better acquainted Henderson entrusted him with sums of money; that he was to receive \$1 for each and every case delivered from these certain ships, the "Ardenza" and the "Frontiersman," whether he, Campanelli, took part in the sales, or not. That his principal duty was to appear at the point of delivery to collect the money due in payment for the liquor, and sometimes at Henderson's suggestion he deposited such money to his own bank account; at other times he would proceed to the Stanford Court Apartments, or to his own office, and make settlements with Henderson as a result of these liquor sales. That early in the year 1924 Henderson informed him of his plans for making a trip to Havana, Cuba, for the purpose of obtaining some liquor; he was advised of the fact that the steamer "Giulia" would make a trip to Havana for the purpose of loading up liquor to bring around to California; that when they started out on this trip sometime, as he recalled it, in the month of April, 1924, for Miami, Florida, he went along on the train in company with Henderson and Johnny De Maria, and Mr. Henderson, De Maria and himself spent about a week in Miami, and then proceeded to Havana by means of the steamer "Key West," and upon arriving at Havana they registered at the [129] "Seville Hotel." He says he stayed in Havana for 15 or 20 days, and during that time had frequent visits with Henderson; that Henderson showed him a certain warehouse there in Havana in which he, Henderson, kept a supply

(Testimony of Alf Oftedal.)

of liquor, which, according to Campanelli's understanding, had been transferred to that point from Scotland; while there the "Giulia" arrived, and he helped Henderson in the matter of loading the ship with about 8400 cases of intoxicating liquor, all of which were removed from the warehouse located on what is known as San Francisco Pier; that Henderson seemed to have complete charge of the ship, as well as with the cargo. Johnny De Maria did not remain in Havana very long, perhaps not more than a week; he does not recall just what became of Henderson, but he thinks he must have returned to Miami before he proceeded to San Francisco. Campanelli said he stayed in Havana until the "Giulia" had loaded, and then proceeded to New Orleans, remaining there two or three days; he says he returned to San Francisco by rail, traveling alone, and he does not recall the date of his arrival here. About 20 days or more after leaving Havana he was in his own office at 17 Columbus Avenue, in this city, when he received a telephone call from Henderson in the city asking him to join the latter at the Clift Hotel on Geary Street; that on that occasion he told him there were about 8500 cases of liquor aboard the "Giulia," and assistance was desired in the matter of disposition of the cargo; that Henderson offered to pay him \$1 a case as a commission for such assistance as he had rendered, or might render in the future, with regard to the disposition of this cargo in San Francisco; and it was estimated between them that he should receive at least \$8500

(Testimony of Alf Oftedal.)

as his share on the deal. Henderson told him Alioto, the foreman for the Booth Fishing Co., of San Francisco, who had assisted in unloading liquors on a previous occasion, would help him in transferring cargoes from the "Giulia" to points along the shore, and he, Campanelli, was requested to get in touch with Alioto to arrange certain details with him; that he was authorized to tell Alioto that it was Henderson's purpose to pay him at the rate of \$2.50 for each case of liquor unloaded from [130] the "Giulia"; that Alioto agreed to do the work, and he, Campanelli, informed him of the date when Henderson expected that the boat would arrive off the coast of California—the boat "Giulia"; about one week after his visit with Henderson at the Clift Hotel, he met Henderson again in his office on Columbus Avenue, and informed him that the "Giulia" was down in Ensenada, Mexico, in need of coal and provisions, and that he, Henderson, would like to have him go down there and help in any way that he could to supply the ship with necessaries; that his cousin, Ricardo, Campanelli, offered to give him a ride to Los Angeles in his automobile; that they started out together, and when near Los Angeles they had some accident which made it necessary for them to go by stage from there on, and then from San Diego they went to Ensenada. Upon his arrival in Ensenada he learned, he said, that the "Giulia" was anchored in the harbor, and he communicated with Captain O'Hagan. Joe Girbando, the supercargo of the "Giulia," was in the city of Ensenada, for the purpose of supply-

(Testimony of Alf Oftedal.)

ing the "Giulia" with groceries and other provisions. The ship was anchored only a short distance from the shore, so he, Campanelli, went out there and spent a little time with the captain, as well as with the supercargo, "Girbando." A small boat named the "Grane," supplied the ship with coal while he, Campanelli, was there. About two or three days after his arrival at Ensenada, the "Giulia," started out on her voyage north, and Campanelli was aboard her; he became seasick upon arriving at a point about 30 miles south of the Farallone Islands, and was permitted to go ashore in the first boat that came alongside; he does not know the name of this boat which took him ashore, but only knows that the captain of her went by the name of Jack. This launch did not remove any liquor, so far as he knows. His cousin, Ricardo, was the only passenger besides himself. They landed at pier 17 or 21 at about five or six o'clock in the evening. Promptly after his arrival here in San Francisco he went to his own office on Columbus Avenue and he found Daniel Henderson there waiting for him. In the course of the visit Henderson told him that one load of liquor consisting of about [131] 300 cases had been brought ashore from the "Giulia." At Henderson's direction he, Campanelli, made one trip out to the "Giulia" by means of the launch "Gnat," transferring some provisions to the ship. Guyvan McMillan arranged for supplying the "Giulia" with coal. No liquor was brought in on the "Gnat" while he was aboard of her on the first trip. He said he learned from Hen-

(Testimony of Alf Oftedal.)

derson that three loads of liquor were removed from the "Giulia" by means of the "Gnat," which was operated by Alioto. He saw Henderson on several occasions after the arrival of the "Giulia" off the Farallone Islands, but did not take part in the removal of any of the liquor from the "Giulia," nor in the disposition of the liquor about the city. Henderson disappeared promptly after the newspapers published the story about the sinking of the "Giulia" and the arrest of the crew.

Q. Is that all of the conversation that you had?

A. That is all, the conversation.

Mr. GILLIS.—You may cross-examine.

Mr. CONNOLLY.—Will the Court instruct the jury with reference to Captain O'Hagan, to disregard it?

The COURT.—I think the jury understand that.

Cross-examination.

Mr. TULLY.—May I have that statement, Mr. Oftedal, and the previous one? A. Yes.

Q. Now, going back to the first statement, Mr. Oftedal, that you procured from the defendant Campanelli, I believe you said this morning that Campanelli came to your office with Mr. Braccini?

A. Yes.

Q. I asked you the question this morning just what connection or relationship, whatever way you want to designate it, did Mr. Braccini have with your office at that time? A. Yes.

Q. Now, what is that relationship?

A. None, whatever, except such relationship as

(Testimony of Alf Oftedal.)

perhaps Campanelli has had; that I have questioned Campanelli for information with regard to our work, as I have questioned Guido Braccini; [132] the two have been associated together, and when I have had occasion to question Campanelli it has been my policy, because it has proved advantageous, to talk with Braccini first.

Q. Let me ask you this question: Did you send Mr. Braccini out to get Mr. Campanelli on the first occasion, I am speaking of now? A. No.

Q. You did not? A. No.

Q. Had you previously discussed with Mr. Braccini the case involving Mr. Campanelli?

A. I asked him this, if he could not locate Campanelli for us; I said that he was a fugitive from justice, and that he was wanted, and he said he thought that he could find him.

Q. You know as a fact, do you not, Mr. Oftedal, that Braccini went up to Broadway Street, in the city of San Francisco, and got Mr. Campanelli there?

A. I don't know what he did in the matter of getting him, because, as I recall it, Braccini refused to tell me where Campanelli was, and I never saw Campanelli, or knew where he was, until Braccini brought him into the office.

Q. Now, getting back to the relationship of Mr. Braccini with your office, you then did ask Mr. Braccini if he could not bring, or find, or locate Mr. Campanelli? A. Yes.

Q. How did you happen to do that?

A. Why, having learned in a previous case han-

(Testimony of Alf Oftedal.)

dled by our office, that Braccini knew a good deal about Campanelli's activities, it was natural to question Braccini as to whether he knew where Campanelli could be located.

Q. Does not Mr. Braccini render services or aid you in other cases?

Mr. GILLIS.—May it please the Court; I can't see the object of the question, and I object to it as immaterial.

Mr. TULLY.—It is very important.

The COURT.—He may answer the question.

A. Yes, I have questioned him with regard to other matters, but so far as rendering me assistance in any other cases that we have handled, I think that it is only in these two cases, in which Campanelli has been more or less involved, that he has rendered what you might call assistance. [133]

Mr. TULLY.—Q. Let me ask you this question: Didn't he actually aid you in the Greer Case, which is now pending at Sacramento?

Mr. GILLIS.—I cannot see that that is material.

Mr. TULLY.—I am trying to establish the connection of this man with his office, and I have a right to examine him.

The COURT.—I think you have the right.

A. If rendered any aid I don't know what it was; I did ask him if he could see if he could learn anything in regard to Greer's activities.

Q. Wasn't he in Sacramento acting under the direction of Mr. Parker, your associate, at the time that the matter was presented to the Grand Jury?

(Testimony of Alf Oftedal.)

A. If he was, I knew nothing about it.

Q. You know nothing about it? A. No.

Q. He did render aid and assistance to you and your office in the Crawford Case, did he not?

A. That was because he was involved—not any more, however, than did Campanelli.

Q. Answer the question: He did render you aid and assistance?

A. Aid in this way, that we depended upon him as a witness in the case, and we sought to produce Joe Campanelli as a witness.

Q. All right; did he render you aid and assistance in the Wolf Case?

A. None, whatever, that I know of.

Q. Did he testify and procure evidence for the hearing before the Grand Jury at Sacramento?

A. The Wolf Case involved, that is, it had a relation with—that is, the Crawford Case, and the Wolf Case—

Q. (Intg.) I understand that, but I am asking if he aided you.

Mr. GILLIS.—Let him finish his answer.

A. The two cases are related, the Wolf Case and the Crawford Case, and the cases of quite a number of other prohibition agents who were proceeded against for accepting bribes were all related, and Joe Campanelli paid a part, with Braccini, in those cases.

Mr. TULLY.—Q. Ever since the Crawford Case, then, Braccini has been [134] rendering you aid, your office, and reporting to your office?

(Testimony of Alf Oftedal.)

A. No, that is not true, because Braccini seldom comes to my office, except, when I ask him to come, and I sometimes ask him for information, just like I ask anyone else that I think may know something about the case in which we are interested.

Q. When did you see Mr. Braccini last?

A. I saw him just a few minutes before I came into this courtroom.

Q. Did you see him yesterday? A. No.

Q. Don't you know the marshal was looking for him and didn't find him, to serve a subpoena, until today?

A. I never knew anything about it; I never knew he was being subpoenaed.

Q. You did discuss, then, with Mr. Braccini, whether he could find Mr. Campanelli, who, you understood was a fugitive from justice—whether he could not find him and bring him to your office?

A. I did not ask him to find him and bring him to the office; I asked him to locate him for us if he could, and let me know where Campanelli was; as I recall it, that was my first purpose in talking with him.

Q. He did locate him and bring him to your office, did he? A. Yes.

Q. How long after you told him that you wanted him to locate Mr. Campanelli did he bring Mr. Campanelli to your office?

A. Well, I think it was two or three days, as I recall it, after he first made the overture to me that he knew where Campanelli was, and he would be glad to bring him in for me, only that Campanelli

(Testimony of Alf Oftedal.)

could not put up \$10,000 bond, and wanted to know if that bond could not be reduced.

Q. Now, do I understand you correctly yet, did you first suggest to Mr. Braccini trying to locate Mr. Campanelli, or did Mr. Braccini bring the subject up with you?

A. As I recall it, immediately after I became aware of the fact that Campanelli was more or less involved in this case, I asked Braccini to come to the office, and I questioned him as to where Campanelli was, and he said he did not know where he was. Now, my best recollection of it is that it was at least a month, possibly a month and [135] possibly a month and a half after that before Braccini voluntarily came to my office and told me he knew where Campanelli was, that Campanelli was willing to come in and give himself up under the circumstances that I have related.

Q. Then, as a matter of fact, you first took the matter up with Mr. Braccini?

A. So far as locating him was concerned.

Q. Yes; and Mr. Braccini did not originally, then, bring Mr. Campanelli in as a friend of Mr. Campanelli's?

A. When he came into the office—

Q. (Intg.) No, just answer the question. Read it back to him.

The COURT.—How does he know whether he brought him in as a friend of Campanelli's, or not?

Mr. TULLY.—He testified to that this morning.

A. Will you put the question again? I will have to qualify the answer in order to make it.

(Testimony of Alf Oftedal.)

Q. Read the question. (Last question repeated by the reporter.)

A. Yes, because Braccini had always represented himself to be a friend of Campanelli, and as one seeking to look after the interests of Campanelli; that has been our whole relationship, so far as Campanelli is concerned.

Q. Mr. Braccini is also a friend of yours, too, is he now?

A. I would not say he was otherwise; I hope he is not otherwise; if he is unfriendly I do not know it.

Q. Now, when Mr. Braccini came in with Mr. Campanelli—just a minute—did you endeavor to locate Mr. Campanelli, yourself, prior to Mr. Braccini? A. Yes.

Q. Did you ever go up Broadway Street, in this city?

A. Yes, I went to—whether it was Broadway Street, or not, I would not say, but we learned, and I knew where he had previously been located, and I sent an agent there and found he was not there, and then I sent him to the home of where I understood Campanelli had lived with his parents some time previous.

Q. You knew Mr. Campanelli at that time?

A. I had seen him, because I [136] had interviewed him once previously, as I said, in my office, in the presence of Braccini.

Q. You did not go up personally to see if you could find him? A. No, I did not.

(Testimony of Alf Oftedal.)

Q. Now, when Mr. Braccini and Mr. Campanelli came to your office together, were you the first person they saw?

A. So far as I know, yes.

Q. They went directly into your office?

A. Yes.

Q. What was the first thing that was said there then?

A. As I recall it, I joked a little with Campanelli, and let him know how we had been striving to locate him for some time.

Q. What did you say, that is what I want, Mr. Oftedal.

A. It is pretty hard for me to recall just what it was, because I remember it was small talk to begin with, but what I do recall, however, is, when we got right up to the subject of my interview with him—

Q. (Intg.) What did Mr. Braccini say, if anything, there? Did you speak first, or did Mr. Braccini?

A. I cannot recall that now as to who spoke first, just what was said, because, as I say, I recollect it was a lot of small talk to begin with, and Campanelli seemed in quite good humor, and so did Braccini, and I recollected then I had seen Braccini before and spoke to him sometime about the previous occasion when he was in my office, and when we had wanted him at that time he had disappeared.

(Testimony of Alf Oftedal.)

Q. Who brought up the subject of making this statement? A. I did.

Q. What did you say in that regard?

A. First I said to him, I outlined what I understood to be the facts in the case; I says, "Now, here is what we know about this case, Campanelli," and I went ahead and outlined in substance what has been presented here, tending to show how the "Giulia" operated, and I knew of this trip that Campanelli had made, as I recall it I had learned about that trip to Havana, and I said, "Now, I want to question you some about this matter, and you understand that you are about to be proceeded against for this violation that is charged against you, and anything [137] you say may be used against you. Now, I am going to ask you some questions, and if I ask any questions which you do not want to answer you have a right to decline." And he said he was perfectly willing to tell the whole story, and what he wanted me to understand was that he was only a minor offender, and that the big dealer was Henderson; and he showed me some spirit of animosity toward Henderson. Then after I had questioned him a little I asked him if he was willing that we should make a record of the interview, and he said that he was, and I called in the stenographer, and I would turn and question him again over the same field I had already covered partially, and when I understood in sub-

(Testimony of Alf Oftedal.)

stance what he had to say that I thought was material I would dictate it right there in his presence to the stenographer; and that is the way this whole statement, the first statement, was procured.

Q. In that conversation did either you or Mr. Braccini say anything about granting him immunity for making this statement?

A. Nothing, whatever.

Q. Did you tell him that you might want him to be a witness?

A. I said that we might want him as a witness in this case, because he made a statement that he wanted to plead guilty, and get out of it as light as he could.

Q. He made that statement to you? A. Yes.

Q. You said that you might want to use him as a witness? A. Yes.

Q. Did you tell him if he would plead guilty that you would go to the judge trying the case and see that he was fined \$300?

A. No, I never said that to him.

Q. Did Mr. Braccini say that?

A. No, not in my presence.

Q. Not in your presence? A. No.

Q. Now, originally, the statement that you made, or the conversation that you had was by way of questions and answers? A. That is it.

Q. Was that taken down by a stenographer?

A. Not the questions and the answers, because every once in a while, when he goes to make an

(Testimony of Alf Oftedal.)

answer, he [138] drifts out into Italian, that is he did while Braccini was there, and he does not make a direct answer to questions; he understands English very well, and can talk quite fluently when he wants to, but I found that when I tried to make a record of the interview by putting it in the form of question and answer, that he drifted too much away from the subject and I thought the way to expedite the interview was to simply put in substance what he had to say.

Q. Did you take any part of it down in question and answer form? A. No.

Q. In other words, you did not try to reduce it to writing?

A. The girl may have done so, because, as I recall it, I questioned him some time in the presence of the stenographer before I made the record that we have of the interview.

Q. Have you any of those notes?

A. I have none, but it is possible that the stenographer has.

Q. You had a stenographer there from the beginning, did you not? A. Yes.

Q. And all of the preliminary questions were submitted there in her presence, were they?

A. I would not be sure that she was in during the whole part of the first questioning, because as I recall it, I went over the field a little, before I called her in, or it may be that she was pres-

(Testimony of Alf Oftedal.)

ent during the whole time, from when I started to interview him.

Q. At the time that Mr. Campanelli went to your office, there was a warrant out for him, was there not?

A. There had been for some time.

Q. And his bail was fixed in the sum of \$10,000, was it not?

A. That is what I know from hearsay, yes.

Q. He did not hesitate to come to your office, did he, with Mr. Braccini?

A. I do not know about that.

Q. He walked right in in daylight, didn't he?

A. He came right in voluntarily with Braccini, I thought.

Q. Don't you know, as a fact, Mr. Oftedal, that Mr. Braccini told him that he would be given immunity if he would make a statement?

A. No. [139]

Q. Didn't Mr. Braccini ever convey that to you?

A. He never gave me any such idea, because Braccini knows very well, from my previous conversations with him along this same line, that such a thing as granting immunity, or promising any reward or consideration for giving a statement is out of the question in our office.

Q. Don't you know as a fact, Mr. Oftedal, that Mr. Campanelli was brought in there with the idea that he was to be a witness for the Government?

A. I could not see how he would get such an

(Testimony of Alf Oftedal.)

idea; he knew the extent to which he was implicated, and I do not see what could have made him think he was coming in as a witness, because he knew the indictment was out against him, and the purpose of his coming in was to give himself up on the consideration, and as a consideration for that that his bond would be reduced to \$2,500, a bond that he could get.

Q. He knew Mr. Alioto had been in your office, didn't he?

A. Alioto had never been in my office.

Q. Didn't he make a statement?

A. No, not to me.

Q. You know he did make a statement?

A. I don't know anything about it.

Q. You don't know anything at all about Mr. Alioto?

A. I don't know whether Alioto made a statement or not. I suppose he did.

Q. He has not been indicted in this case?

A. I don't know.

Q. Why did you say to Mr. Campanelli then, "We might want to use you as a witness"?

A. Well, did I say that?

Q. You can refer to the record if you think that my statement is correct.

A. It is quite probable that I did make such a statement to him at the time when he said that he wanted to plead guilty.

Q. Did you make the statement, or did you not?

A. I may have done so, I would not be sure

(Testimony of Alf Oftedal.)

one way or the other; I might have said, "We may want to use you as a witness."

Q. Didn't you so testify here this afternoon?

A. I probably said that I might have said so.

Q. Don't you know whether you did, or not?

A. I would not be positive, but [140] I have a hazy recollection that I did, that we might want to use him as a witness. As I recall it, it just seems to me if I said that at all it was the last time I talked with him.

Q. Do you want to convey the idea to this jury that Mr. Campanelli came up to your office with Mr. Braccini for the sole purpose of getting this off his chest?

Mr. GILLIS.—I object to that. I think he should testify to facts.

The COURT.—I don't think that is a proper question as to what he wants to convey. Ask him what the facts are.

Mr. GILLIS.—I object to the question as not proper.

Mr. TULLY.—Q. Do you know why Mr. Campanelli came up to your office with Mr. Braccini?

A. To give himself up, is my understanding of it.

Q. He wanted to surrender? A. Yes.

Q. That is the only idea he had in coming to your office? A. That is it, exactly.

Q. Did he tell you so?

A. Well, I don't know that he told me so, because that was taken for granted, when he came

(Testimony of Alf Oftedal.)

in the office; that was what we were joking about, that he was coming in to give himself up, and that I had looked for him several times previously, and he had always been to parts unknown when we wanted him.

Q. I understood you, on your original testimony, to say that he was a fugitive from justice.

A. Yes.

Q. If he was a fugitive from justice, do you suppose he would voluntarily come in and surrender himself?

A. He was a fugitive from justice up till that time he made this proposition by Braccini, and I let Mr. Braccini know that I had talked this matter over with the United States Attorney, and that the United States Attorney was quite agreeable to reducing the bond to \$2,500 if he would come in and give himself up.

Q. Did you make that proposition to Mr. Campanelli?

A. No, but I said to Mr. Braccini that I was assured by the United States Attorney's office that [141] the bond would be reduced to \$2,500 if Campanelli would come in and give himself up.

Q. Did you have Mr. Campanelli placed under arrest when he came to your office at this time?

A. No.

Q. You made no effort to place him under arrest?

A. Here is what I did; I advised him to go over before the United States Commissioner and in Campanelli's presence, as I recall it, I telephoned to

(Testimony of Alf Oftedal.)

the United States Marshal that Campanelli was on the way over to appear before the Commissioner, and that if they wanted to serve a paper on him, he was voluntarily giving himself up, and that he would be in the Commissioner's office.

Q. You, personally, did not make any effort to arrest him? A. No.

Q. Or to detain him? A. No.

Q. Do you know when the warrant for the arrest of Mr. Campanelli was issued, whether it was before or after this visit?

A. I have not the slightest idea, only what I had assumed.

Q. You made the statement that you understood he was a fugitive from justice?

A. I knew that he was one of those in the indictment, one of those named in the indictment, and I knew the approximate date that the indictment was returned.

Q. Now, Mr. Oftedal, you stated that you informed Mr. Campanelli that any statement he might make might be used against him? A. Yes.

Q. And informed him of his other rights?

A. Yes.

Q. Why didn't you embody that in this agreement or this statement?

A. Well, that is the reason I called him in the second time, one of the reasons, that I did not like the form of the statement, it was obtained rather hastily, because I did not want to detain the commissioner, and wanted to get Mr.

(Testimony of Alf Oftedal.)

Campanelli to come over here—under ordinary circumstances that statement would have shown that he made the statement of his own free will and accord, without any reward or promise therefor, etc., but it was very hastily obtained, and he was nervous and anxious to get over this interview, so in that way I failed to state “free and voluntary” at the end of the statement, [142] as I usually do.

Q. Isn't it the uniform policy of the Government agents to put that in the first paragraph?

A. It is quite customary for some officers to put it in the first paragraph, and for others to put it in the concluding paragraph.

Q. You did not embody any of those remarks in this document, at all?

A. To the effect that he was giving the statement of his own free will?

Q. Free and voluntary? A. No.

Q. How long was he in your office.

A. I do not recall now, but I imagine it was, my recollection is it was at least an hour.

A. At least an hour? A. Yes.

Q. You did not have time within that hour to embody that provision in here?

A. Well, it was not the time; he was so willing about the whole thing that at the time the necessity for it did not occur to me; it never occurred to me for a moment that Campanelli would ever deny the statement that he was making to me at that time, because his whole demeanor was that he wanted to

(Testimony of Alf Oftedal.)

give himself up, wanted to plead guilty and make a complete confession of it.

Q. For that reason you left out the statement in there to the effect that he was informed of his rights?

A. His willingness, his apparent demeanor at that time, or willingness to give himself up and tell everything is what induced me to leave it out; that it, I would have considered that an essential point if he had shown any hostility toward the interview at all.

Q. Now, you say you had another interview with him on or about December 9, 1924? A. Yes.

Q. But preceding that, you had interviewed him in this building? A. Yes.

Q. Who brought him to this building?

A. As I recall it, during the first interview he had promised to bring in to me a lot of cancelled checks, and other evidences of his financial transactions with Daniel Henderson and others like McMillan; and he promised me faithfully that he would bring them in a day or two after that first interview on November 5, I believe it was, he failed to [143] appear, and I asked Braccini several times about that, when Campanelli was going to come in and give these checks, and, as I recall it now, Braccini said that Campanelli had left his cancelled checks at some distant point, I believe it was up on this ranch where he was in hiding before he gave himself up, and that when he could get these cancelled checks he was going to bring them in. Well, now, as to just how Campanelli and Braccini

(Testimony of Alf Oftedal.)

happened to go to the District Attorney's office at that time, I do not recall, but I suppose that I had asked Braccini to ask Campanelli to come in again.

Q. And you expected him to aid the Government again by bringing in other cancelled checks?

A. Yes.

Q. And you had Mr. Braccini get in touch with him again and see why he did not bring the checks in?

A. That is only a recollection, because it seems to me that every time that Campanelli did come in, all three times, that I did ask Braccini to ask Campanelli to come in.

Q. In other words, you did not deal directly with Mr. Campanelli when you wanted him?

A. I never could find him.

Q. You sent Mr. Braccini to get him?

A. I tried to find him and never could; that is the reason I always had to locate him through Braccini.

Q. He was out on bond, was he not, at the time of your interview here in the District Attorney's office? A. Yes.

Q. You never tried to ascertain his whereabouts from the bond, did you?

A. Well, we may have done that; I had some agents working on all phases of the case, and they may have looked into the bond.

Q. Now, coming down to this interview on December 9, 1924, you sent Mr. Braccini out again to bring in Mr. Campanelli, did you not?

(Testimony of Alf Oftedal.)

A. As I recall it, every time Campanelli came in it was as a result of my request of Braccini, asking him if he could not locate Campanelli, and ask Campanelli to come in; there was no bringing in, there was no arrest, no compulsion about it, that I know of, because Campanelli was always willing to come, apparently, when he came with Braccini. [144]

Q. Now, on this last interview, which you had with him, you asked him to execute another statement, did you not, embodying some of the provisions or statements in the prior one, and some additional ones?

A. Yes; I said I was not satisfied that he was giving me all the information that he could give in the first one, not in the second interview.

Q. Now, why did you want that second statement, Mr. Oftedal?

A. Because the statements which he had made in the office of the United States Attorney about these deliveries, the circumstances under which these deliveries of liquor were made in the city, and the part he played in collecting the money, etc., was quite material to an investigation which we were then making of an income tax liability, and, furthermore, it was important for me to get this statement in more comprehensive form, and show, if I could, a little more of the relationship between Campanelli and these other men like Guyvan McMillan, Guy Manning, and Johnny De Maria.

Q. What was the first thing that you said to Mr. Campanelli when he came in on this last occasion on December 9?

(Testimony of Alf Oftedal.)

A. I said, as I recall it, Now—one of the first things I said was, he had disappointed me a good deal in not bringing in the cancelled checks, and he said he had found they had all been destroyed, and I said I doubted that statement very much, because he had assured me so faithfully in the first interview that he had those cancelled checks, and other evidence of his financial dealings with Henderson; that is the way, as I recall it, the conversation started.

Q. What did you say to him with reference to this last statement?

A. I said that I would like to get another statement from him, that I felt that he was holding back information on me, and that we had gathered some additional evidence since my first interview with him, and I wanted to see whether he was going to show good faith, as he had promised to do in the first instance, by telling the whole story.

Q. Did you submit to him questions which were answered on this last occasion?

A. No; on the last occasion I placed the affidavit in different form, that is, I dictated the affidavit in the first person, in order that I might pin him down [145] to details on those points that I thought were quite material, and I further wanted to satisfy myself that he was going to act in good faith, or was going to decline to give us any information; I wanted to satisfy myself then and there as to whether he was being influenced to take a stand to protect the other defendants in other

(Testimony of Alf Oftedal.)

words whether he was going to give me all the information which he had promised.

Mr. WILLIAMS.—I ask that that go out, about protecting the other defendants.

The COURT.—The jury will disregard that statement about protecting the other defendants.

Mr. TULLY.—Q. Then you expected and relied upon Mr. Campanelli to furnish you such information?

A. I sought information from Campanelli, because I believed that he had a lot of available information that he could give, and he seemed very willing to give it on the first occasion.

Q. You say you expected him to act in good faith?

A. Good faith in this that he had agreed to tell me everything, and to give me all the evidences of his relations with these other men, and this "Giulia" affair, and he had failed to do so, and in that he was failing to show his good faith.

Q. Did he say anything about being promised immunity which he was not being given?

A. He never said a word about immunity, because Campanelli knew better than to suggest such a thing to me, because he had been interviewed by me on a previous occasion in connection with the Crawford Case, and knew such a thing as granting immunity was out of the question.

Q. Did you say anything to him in this statement of December 9, 1924, about why you were not going to use him as a witness?

(Testimony of Alf Oftedal.)

A. Not a thing was said about why I was not going to use him as a witness, because I had not either notified him that I was going to use him as a witness, or anything else; but he had sent Braccini in to convey some message to me, that he would like to have me say that, and he wanted Braccini to find out from me if I could not promise him immunity if he would plead guilty, that he wanted to plead guilty, but I let [146] Braccini know that nothing like that could be done.

Q. Do you know if Braccini conveyed to him any information to him as to what you said you would give him if he would come in and make another statement?

A. No, because Braccini and I never discussed what might be given to Campanelli by way of punishment; that is, I do not pretend to speak for the Court as to what kind of a sentence he would get regardless of whether he pleaded guilty or stood trial.

Q. Did Mr. Braccini ever tell you that he had informed Mr. Campanelli that if he should make this statement you would go to the court trying this case and see that Mr. Campanelli was fined \$300?

A. I never said that to anyone, because I have never gone to the Court to seek a fine or a reduction of sentence for anyone.

Q. Do you know whether Mr. Braccini had represented you as making that statement?

A. If he did, I know nothing about it, and he had no authority to do it.

(Testimony of Alf Oftedal.)

Q. Now, Mr. Oftedal, I notice this last paragraph on this statement of December 9, 1924: "I, G. Campanelli, *alias* Joe Campanelli, hereby certify that the foregoing is a true record of the statements dictated to the stenographer in my presence, and I further certify that everything contained in this record is the truth, and nothing but the truth regarding my relations with Daniel Henderson, and the smuggling expedition of the steamer 'Giulia.' I have made this statement of my own free will and according, realizing that the statements contained herein may be used against me in the event of trial." You added that paragraph to this statement?

A. Yes.

Q. Why didn't you put it in the first one?

A. I have already explained that.

Mr. GILLIS.—That has already been asked and answered two or three times.

The COURT.—He explained that very distinctly and clearly.

Mr. TULLY.—In other words, you had made up your mind to put this in this last one, anyhow?

A. I always put a certification of that kind in a [147] statement; I don't know when we ever obtained a statement from a witness before without having it show that the witness makes the statement freely and voluntarily, without reward or promise therefor, or duress, etc.

Q. Now, this statement of December 9, 1924, I understand you had prepared.

(Testimony of Alf Oftedal.)

A. That statement that you have there is December 9?

Q. 1924, yes.

A. I dictated it to the stenographer—it was dictated under the same circumstances as the first one, that is, Campanelli was questioned in the presence of the stenographer, and when I understood in substance what he was saying with regard to any particular point, I dictated for him in the first person there to the stenographer, and he agreed that everything in it was true, and after that statement was obtained, and after the certification was added on to it, I read it aloud to Campanelli very carefully, piece by piece, and he agreed that everything in it was true. He said that his attorney had instructed him not to sign any statement, and I asked him then to take this copy, which I presented to him, over to his attorney, and show it to him, and I said I thought his attorney might advise him to sign it.

Q. Was Mr. Braccini there when you gave that direction? A. Yes.

Q. You sent Mr. Braccini with Mr. Campanelli with this copy of this instrument to the attorney's office?

A. I did not send him, because that is where they said that they were going, and if I said anything, it would be along this line, I might have said this—I might have said, "Well, now, all right, if you do not want to sign this statement, you just take this copy over and show it to your attorney; I do not want to take any undue advantage of you, and after you have talked it over with your attorney

(Testimony of Alf Oftedal.)

perhaps he will advise you to come back again and sign it, and if you do not sign it, of course, that is your privilege; you are not obliged to sign anything.

Q. Didn't he tell you before he left the office that some portions of this he could not swear to, because they were not the truth?

A. He never said such a thing; in fact, he said everything in there was the absolute truth. [148]

Q. Well, now, you know Mr. Braccini left your office with a copy of this statement with Mr. Campanelli, to go over and see the attorney for Mr. Campanelli?

A. Mr. Campanelli did not seem to want to take the copy along with him, and when I passed it to him, as I recall it, he left it lying there on the desk, and Mr. Braccini picked it up.

Q. Did Mr. Braccini ever report to you that he had gone to the office of the attorney for Mr. Campanelli with Mr. Campanelli on that particular occasion?

A. He has never told me what the result of that thing was; I often wondered why Braccini never came back to tell me what did transpire when they took this copy away. I have never seen Braccini or Campanelli to discuss that subject with them since.

Q. You saw Braccini many times since, did you not?

A. I have seen him perhaps three or four times since, but I knew that he did not have much control

(Testimony of Alf Oftedal.)

over Campanelli, because he had told me about that several times, so I did not hold Braccini in any way responsible, or wonder at it that they did not come back to sign that original statement, because Campanelli has done that every time that he has come into the office, he comes and is gone, and you cannot find him again unless you get him through Braccini.

Q. Now, Mr. Oftedal, did Mr. Braccini ever report to you that he had gone to the office of the attorney for Mr. Campanelli, and there reported that if Mr. Campanelli would sign this statement, you would see that Mr. Campanelli was granted immunity, and that the attorney informed Mr. Braccini and said to him to go back and convey the information to you that if you wanted Mr. Campanelli to testify to anything in this case you would have to subpoena him as a witness, in view of what had occurred before?

A. That is a pretty long question.

Q. Was any information to that effect conveyed by Mr. Braccini to you?

Q. No, none whatever; Braccini has never conveyed any such information.

Q. He has never mentioned the fact that he had called at the office?

A. No; if he did I do not recall it; I do not recall of his ever saying [149] that he went to the attorney's office in company with Campanelli.

Q. Did you take up with him to see why he had not?

A. No, I never have done that, for the reason I

(Testimony of Alf Oftedal.)

rather expected the thing to turn out just as it did.

Q. Now, Mr. Oftedal, there were other agents of the Government, were there not, working on this case, that is, customs officials?

A. I think so; I am quite sure that is true.

Q. Mr. Creighton was one of them, was he not?

A. Yes.

Q. I will ask you if you are aware of this fact, that shortly after Mr. Campanelli had refused to execute that agreement Mr. Creighton had Mr. Campanelli arrested on Broadway street—

Mr. GILLIS.—Wait a minute.

Mr. TULLY.—Let me finish.

Mr. GILLIS.—Counsel is trying to inject a lot of stuff into the record that does not belong there.

Mr. TULLY.—I have the witness here to prove it.

Mr. GILLIS.—I have a right to make an objection.

The COURT.—That is rather an unusual question. I have to rely on counsel's integrity.

Mr. TULLY.—Here is the situation, so that your Honor will have the situation—

The COURT.—You may ask the question; I hold you responsible for it.

Mr. TULLY.—I want to explain the circumstances, your Honor, why I am asking this question.

The COURT.—You ask the question. I do not care for any explanation of the circumstances. You take the responsibility.

Mr. TULLY.—Q. Do you know, Mr. Oftedal, that

(Testimony of Alf Oftedal.)

shortly after Mr. Campanelli refused to execute that statement that he was arrested by another Government agent without a warrant and put in jail? A. I know nothing of that kind.

Q. You know nothing at all about that?

A. No. [150]

Q. That was not with your knowledge or consent?

A. It would have never been done with my knowledge or consent.

Q. In other words, the agent who did that did it upon his own volition?

The COURT.—You are assuming it was done. That is why I was in doubt about it a moment ago.

Mr. TULLY.—I intend to prove it was done. The only thing I wanted to see was whether this man had anything to do with it.

The COURT.—Yes, he said he did not know anything about it.

Mr. TULLY.—Q. Mr. Oftedal did Mr. Braccini receive any pay or compensation for his efforts?

A. From me?

Q. From you the Government. A. No.

Q. He did all this freely and voluntarily?

A. Everything that I know of he has done free and voluntarily, without any compensation of any kind.

Q. Even on this other work that I have called to your attention, these other cases he has worked on?

(Testimony of Alf Oftedal.)

A. I do not know of any instance when he has received any compensation, except, as I recall it, we sent him along as an informer with a special agent in connection with an investigation of the Crawford Case, and I did arrange, I believe, to cover his expenses on those trips, and possibly paid him a small compensation; that is, if we did, we got authority to employ him as a special employee. Now, I just have a faint recollection of that. I will be glad to produce a record of it if it is wanted. I do not recall just now whether we paid him or not. I just think we did.

Q. I am not asking you to produce the record. All I want to know is whether he received compensation for that work.

A. I think we paid him for possibly six days at the most; I do not think we could have paid him any more than six days and expenses, and that was in the early stages of the Crawford investigation; more than two years ago.

Q. In this work that you carried on in Sacramento, was he ever paid for it?

A. Never has been, with my knowledge and consent, no. [151]

Q. This first statement, Mr. Oftedal, was made on November 5, was it not?

A. I believe that is the date upon my statement.

Q. Yes, that is the date that appears on it.

Mr. TULLY.—May I have the indictment, Mr. Clark? The indictment bears the file date of November 12, 1924; the bonds of the respective de-

(Testimony of Alf Oftedal.)

fendants are endorsed as follows: Daniel Henderson, \$10,000, McMillan, \$10,000, Holmes, \$10,000, De Maria, \$10,000, Gueseppi Campanelli, \$2,500; Ricardo Campanelli, \$2,500.

Q. Mr. Oftedal, was that bond of Mr. Campanelli's fixed upon that indictment with your consent and suggestion at \$2,500?

A. I doubt it, for I had no control over that thing at all.

Q. Did you suggest it to the District Attorney's office?

A. I might have done that, because I recollect that I did suggest some high bonds in some of these cases, but I don't think it was in this case; I think it was in the "Quadra" case.

Q. Mr. Oftedal, did you see Mr. Braccini yesterday? A. No.

Q. You did not see him at all yesterday?

A. No; if I did I do not recall it. I am quite sure I did not.

Q. You would recall if you saw him yesterday?

A. If I passed him on the street and saw him I might not recall it.

Q. Let me ask you this question: Did you speak to him?

A. I am quite certain I did not speak to him.

Q. You did not speak to him?

A. I am quite certain of that. If I did, I do not recall it.

Mr. TULLY.—That is all.

(Testimony of Alf Oftedal.)

Redirect Examination.

Mr. GILLIS.—Q. Before the indictment was returned, there was a complaint filed before the Commissioner, in which the bond of Mr. Campanelli had been made at \$10,000: Is that not true?

A. Yes. [152]

Q. It was the bond before the United States Commissioner that was reduced from \$10,000 to \$2,500? A. That is it.

Mr. GILLIS.—That is all.

Mr. TULLY.—That is all. [153]

TESTIMONY OF PLINIO COMPANA, CALLED
AS A WITNESS FOR THE UNITED
STATES.

PLINIO CAMPANA, called as a witness for the United States, being duly sworn, testified as follows:

Mr. GILLIS.—Your business is what, Mr. Campana?

A. I am with the Mercantile Trust Co., manager of the Broadway and Grant Avenue office.

Q. Have you with you a bank statement of Mr. G. Campinelli? A. I have.

Q. Will you produce that, please? A. Yes.

Q. That runs for what period of time?

A. July 21, 1923, to August 28, 1924.

Q. Do you know Mr. Campinelli? A. Yes.

Q. He is the gentleman who sits behind Mr. Tully at the table? A. Why is Mr. Tully?

(Testimony of Plinio Compana.)

Q. Mr. Tully is the first man, here, in the black suit. A. Yes.

Mr. GILLIS.—Mr. Campinelli sits behind him?

A. Yes.

Q. These are the records of the bank, and taken from the records of the bank? A. Yes.

Mr. GILLIS.—I ask that these be admitted in evidence and marked Government's exhibit next in order.

Mr. TULLY.—Objected to on the ground that they are immaterial, irrelevant and incompetent, and no foundation [154] whatever laid, nothing to show this man kept the records, or knows anything about them. It has also to do with an account in the year 1923, long prior to the date fixed in the indictment.

The COURT.—What is that?

Mr. GILLIS.—It is a complete record of this man's account at the bank, from July 21, 1923,—to when?

The WITNESS.—From the date it was opened to the date it was closed.

Mr. TULLY.—Absolutely no foundation laid, nothing to show this witness had anything to do with it, with the entries, or the keeping of the account.

The COURT.—That is a bank record?

Mr. GILLIS.—That is a bank record.

The COURT.—It will be admitted.

Mr. TULLY.—Exception.

(The document was marked U. S. Exhibit 10.)

(Testimony of Plinio Compana.)

Mr. GILLIS.—Have you made a total of these deposits made from this? A. Yes.

Q. What is that total?

A. I just made a total of the deposits.

Q. A total of the deposits is what?

A. \$157,611.02.

Mr. TULLY.—The same objection and exception.

The COURT.—Yes.

Cross-examination.

Mr. TULLY.—Who kept that account, Mr. Campana?

A. What do you mean, who kept the account?

Q. In the bank. Did you keep that account in the bank yourself? [155]

A. I am the manager, and the bookkeeper keeps the account.

Q. Who kept that account? Did you keep it personally?

A. I can't keep them; we have a bookkeeper, we hire a bookkeeper, and he runs the account, and then we have another bookkeeper that runs the statements, it is run twice.

Q. In other words, you personally had no contact with that account at all, other than that of manager of the bank?

A. I know that the account is there, and I check up the checks that come in and out.

Q. Did you make any of these entries on that slip of paper?

A. What do you mean, on that slip of paper?

(Testimony of Plinio Compana.)

Mr. GILLIS.—I think that is immaterial, whether he did or not.

Mr. TULLY.—There are three separate papers here. Did you put down any of these figures on these papers?

A. I run the adding machine lots of times.

Q. Answer my question. A. Yes.

Q. Point them out, what ones?

A. I can't tell you the ones.

Q. Then why did you say "Yes," if you could not tell me?

A. I could not pick out the ones exactly; I do not think you could pick out anybody's in the bank exactly.

Q. Then you don't know exactly which one?

A. I say that I do know that I made some of the entries.

Q. Pick out the ones?

A. I could not pick out the ones. [156]

Q. You cannot pick out any items in this account?

A. No; here is the reason why, my bookkeeper might be sick, so I run the book that day. Now, I cannot go and tell the day that I went to run the ledger account.

Q. You cannot name one single item in it, then, that you entered?

A. I can't pick it out exactly, no.

Q. You can testify that you did not make them all?

A. No, I did not make them all, I am sure.

(Testimony of Plinio Compana.)

Q. You have a bookkeeper there who usually keeps the books? A. Yes.

Q. Unless he happens to be ill, and then you may make an entry?

A. I might make an entry, or the assistant manager make an entry.

Q. Another person might make the entry.

A. Yes. .

Redirect Examination.

Everything in the bank is done under my supervision and books are kept under me. [157]

TESTIMONY OF H. F. DUFF, CALLED AS A WITNESS FOR THE UNITED STATES.

I am an immigration inspector and the officer that delivered the members of the crew from the "Giulia" into the custody of the United States Marshal.

TESTIMONY OF CHRIS RUNCKEL, CALLED AS A WITNESS FOR THE UNITED STATES.

I am a deputy United States Marshal and received from the Immigration authorities, into the Custody of the United States Marshal, the crew of the boat "Giulia."

Mr. GILLIS.—Now, may it please the Court, that is the Government's case, with this exception. I will ask at this time that the exhibits have been introduced in evidence, referring to the papers

which were taken from Captain O'Hagan, of the "Giulia" and the Government's Exhibit 9, which refers to the King Coal Co. bill for delivery of coal to the "Mae Heyman" be introduced in evidence as against all defendants, subject, of course, to the instructions of the Court.

The COURT.—That is, as to all defendants that are alleged to be parties to the conspiracy?

Mr. GILLIS.—I mean subject, of course, to the Court's instruction as to the finding of a conspiracy by the jury.

Mr. TULLY.—We make the same objection and take an exception.

The COURT.—I think that is all right as to all matters except that letter that was written in Italian. I do not think that ought to be considered against anybody in this case. There is no evidence as to who wrote it, nor how it came into the captain's possession, nor even that he could read it.

Mr. GILLIS.—That is Government's Exhibit No. 6.

The COURT.—I think that ought to be withdrawn, if you have not any other evidence as to that. [158]

Mr. GILLIS.—I have no other evidence.

The COURT.—I think that ought to be withdrawn, because there is nothing in the record to show how the captain got possession of it, nor who wrote it, nor that the captain was able to read the paper himself. I do not think it would be

proper to charge him, or anybody, with the contents of that paper.

Mr. GILLIS.—That is Government's Exhibit 6.

The COURT.—I think that should be withdrawn. I do not remember the exhibit number, but it is the letter that is in Italian, the unsigned letter, and the translation of it.

The COURT.—They will understand that. I do not think it is necessary to repeat that every time; but the jury will understand that that letter—you will recall that was a letter that was in Italian, unsigned, and found on the boat, or in the captain's possession—the Government has offered no evidence whatever as to its authority, how the captain came in possession of it, or that the captain could read it, or knew its contents, and, therefore, the Court is of the opinion that neither he nor anybody else connected with the affair ought to be charged in this case with the contents of that letter.

Mr. GILLIS.—That applies also to the original letter and the translation, the original letter being Exhibit 5, which will be withdrawn, and the translation Exhibit 6; they will be withdrawn.

The COURT.—Yes. [159]

MOTION TO DISMISS AND FOR A DIRECTED VERDICT.

Thereupon counsel for the respective defendants made a motion to dismiss and for a directed verdict which the Court denied with a right to renew

the same at the close of the case, to which an exception was duly and regularly taken.

Thereafter counsel renewed the various motions to strike out portions of the testimony as follows:

The COURT.—Counsel may proceed with this case.

Mr. TULLY.—Before proceeding to offer any testimony, your Honor, I desire to make a formal motion to strike out the various statements heretofore presented by the Government, upon the ground that they are immaterial, irrelevant and incompetent, and introduced prior to the proof of any conspiracy; there is no sufficient evidence to establish a conspiracy to warrant the introduction of any of these.

The COURT.—That applies to all of the statements?

Mr. TULLY.—All of the statements. With reference to the statements heretofore introduced by the testimony of Mr. Oftedal, I desire to make the additional objection as to that one, that it does not appear that it was free and voluntary, but, on the contrary, it was obtained by promise of immunity.

The COURT.—The objection will be overruled.

Mr. TULLY.—Note an exception. [160]

TESTIMONY OF JOSEPH LIPPE, CALLED FOR THE DEFENDANT CAMPINELLI.

I am a detective-sergeant and am acquainted with a Government agent named Creighton, and also with a Government agent named Campinoli. I know the defendant Campinelli. I arrested him on or

(Testimony of Joseph Lippe.)

about the month of February, 1925, at the direction of the Government Agent Campinole, who pointed him out to me. I had orders from the Captain of Detectives, Matheson, to go with Campanole and arrest anyone who he pointed out to me. Mr. Campanole pointed out to me the defendant Campinelli and I placed him under arrest. We took him over to the Hall of Justice and booked him "En route to the U. S. Marshal." I didn't know of any State charge against Campinelli. I had no warrant at all for his arrest. As soon as we booked the defendant Campinelli at the Hall of Justice, Campinole rang up Mr. Creighton. I left Campanole with the defendant Campinelli at the city prison. About an hour later I returned and Creighton asked me, "How about Campinelli" and asked me whether I could let Campanelli go. I went over to the desk sergeant and made arrangements to turn Campinelli over to Mr. Creighton, which was done. The last thing Mr. Creighton said to Campinelli was, "Well, you will be over at my office about nine o'clock in the morning." We all went out of the Hall of Justice together. When we took the defendant Campinelli down to the prison we stripped him and searched him and removed from him all valuables. In the entire matter I was acting on behalf of the United States agents and not on behalf of the State Government nor on behalf of the City Government. I did not participate [161] in the conversation between Creighton and the defendant Campinelli.

(Testimony of Joseph Lippe.)

Cross-examination.

I first saw Campinole in the Hall of Justice. Mr. Creighton was not with him at that time. I didn't know Joe Campinelli, the defendant, before I arrested him. I don't know Ricardo Campinelli, Mr. Campinole told me that they were looking for Ricardo Campinelli. When I left the Hall of Justice I had a picture of Ricardo Campinelli and when Mr. Campinole pointed Joe Campinelli I hesitated to take him and did not want to take him at all at first but when he placed him under arrest my duty was to take him and go through with it. I could see from the picture that it was not the same man but we thought probably it was and I didn't know which was Joe. Mr. Creighton was called out of bed between 12 and one o'clock at night to come down and identify him. He was turned loose about an hour later.

Redirect.

I have the picture that was given to me by the Government agent to identify Campinelli. Campinole, the United States agent, seized Campinelli, the defendant, first. When he asked Campinelli what his name was Campinelli said "Joe Campinelli." We found Campinelli in a sandwich shop on Broadway and Columbus Avenue, about 12:30 at night. When Campinole, the United States agent seized Campinelli and told him he was under arrest Campinelli said to him, "I am under bond now; what do you want me for?" and Campinole replied, "Never mind about that, you will find out

(Testimony of Joseph Lippe.)

later." When he was booked at the city prison he gave his right name "Joe Campinelli." The name "Ricardo [162] Campinelli" was mentioned to me before I started out. It was not mentioned in the presence of Joe Campinelli. [163]

TESTIMONY OF H. S. CREIGHTON, RECALLED AS A WITNESS FOR THE DEFENDANT GUISEPPI CAMPINELLI.

I took other papers from Captain O'Hagan in addition to those heretofore offered in evidence:

Q. I show you this document, Mr. Creighton, and ask you if this is one of the papers or documents that you took from the Captain, or that were given to you by the Captain? A. Yes, it is.

Mr. TULLY.—We desire, your Honor, at this time to offer this instrument; it purports to be a certified copy of original bill of sale transferring the ship "Giulia," or certifying that the ship "Giulia" is the property of Guyvan McMillan. It bears the seal of the Panama Consul at Los Angeles, California.

Mr. GILLIS.—We, of course, may it please the Court, have no objection to the introduction of this paper but we do object to it being characterized as a certified copy of a bill of sale.

Mr. TULLY.—I am merely accepting the seal as it appears.

The COURT.—It shows on its face. . . .

Q. I show you another instrument, and ask you

(Testimony of H. S. Creighton.)

whether you took that from the captain, or whether it was given to you by the captain?

A. That is one of the papers given to me by the captain on the 25th of October.

Mr. TULLY.—We desire to offer this document, your Honor, it is the original bill of health; it purports to show the ownership of the Panamanian ship “Giulia” by J. McMillan; it bears the date on the face of it, “July 7, 1924.”

The document was marked Defendant’s Exhibit “G”) [164]

TESTIMONY OF G. BRACINI, CALLED FOR DEFENDANT CAMPANELLI.

G. BRACINI, a witness called on behalf of the defendant Campanelli being duly sworn, testified as follows:

Mr. TULLY.—Q. Here is an additional document which Mr. Gillis just handed me, taken from the captain, and still in the possession of Mr. Creighton.

Q. Mr. Bracini, what is your business?

A. Salesman.

Q. Who are you working for now?

A. De Martini Motor Truck Co.

Q. Are you acquainted with Mr. Campanelli, the Government agent? A. Yes.

Q. Are you acquainted with the defendant in this case, Mr. Campanelli, who sits here?

A. I beg your pardon.

(Testimony of G. Bracini.)

Q. Are you acquainted with Mr. Campanelli, the defendant who sits here in this case? A. Yes.

Q. Are you the Guido Bracini who was present during an interview between Mr. Oftedal and Mr. Campanelli? A. Yes.

Q. On or about the 5th of November, 1924?

A. I can't establish the date.

Q. You can't establish the date? A. No.

Q. But that is approximately correct, so far as the date is concerned? A. I believe so.

Q. Had you met Mr. Oftedal prior to that time, Mr. Bracini? A. Oh, yes.

Q. How long before?

A. On different occasions.

Q. Well, how long a time before November 5, 1924? A. It is pretty hard for me to say.

Q. One year, two years, three years?

A. Oh, no, probably a month or fifteen days.

Q. Fifteen days or a month before you had seen him, you mean? A. Yes.

Q. But how long have you known him altogether?

A. About two and [165] a half years.

Q. About two and a half years? A. Yes.

Q. You place the time of seeing him before this time about 15 days or a month, do you?

A. I would not absolutely say any dates. I had seen him before that time when I went there with Mr. Campanelli.

Q. Let me ask you this, Mr. Bracini, did you ever aid or assist Mr. Oftedal, or do any work for him?

(Testimony of G. Bracini.)

Mr. GILLIS.—Just a moment. To which question I object as being immaterial and irrelevant, not the proper way to prove agency.

Mr. TULLY.—I am entitled to do it.

The COURT.—How would you prove it otherwise?

Mr. GILLIS.—You cannot prove agency by the testimony of the agent, may it please the Court. You can only prove it by the testimony of the principal.

The COURT.—I don't know about that.

Mr. TULLY.—This is a criminal trial, not a civil trial.

The COURT.—I think he can testify he was acting for Mr. Oftedal.

Mr. GILLIS.—I think, may it please the Court, there is the further objection that it calls for a conclusion, and assumes he was acting for him. The witness can state what he did.

The COURT.—He can state what his relationship with Oftedal was, if any.

Mr. TULLY.—Read the question.

(Last question repeated by the reporter.)

A. Yes, I assisted Mr. Oftedal sometimes as an interpreter.

Q. In any other capacity?

A. I don't know exactly.

Q. Are you sure that that is all? I am just trying to find out.

A. Once I went on an investigation, about two years, or two years and a half ago. [166]

(Testimony of G. Bracini.)

Q. Have you done any work for him recently?

A. No.

Q. Were you paid for your work that you did two and a half years ago?

A. I had a small fee, and expenses compensation.

Q. You did see Mr. Oftedal 15 days or 30 days prior to the time of this statement?

A. In all probability, yes, I did.

Q. That is as near as you can place it?

A. That is as near as I can remember it.

Q. I suppose you received compensation when you acted as interpreter, did you not? A. No.

Q. No compensation at all?

A. No compensation.

Q. You were just doing it for friendship?

A. Friendship generally between the defendants and the Intelligence Unit office.

Q. Getting back to this particular interview, Mr. Bracini, let me ask you this question: Did Mr. Oftedal ask you to go out and see if you could find Mr. Campanelli, that he was a fugitive from justice? A. No.

Q. He did not? A. No.

Q. He did not ask you anything of that sort?

A. No.

Q. He did not ask you to go out and get Campanelli at all?

A. No, Mr. Campanelli came to my house.

Q. Mr. Campanelli came to your house?

A. Yes.

Q. You reside here in San Francisco?

(Testimony of G. Bracini.)

A. Yes.

Q. Did Mr. Oftedal ever tell you, or tell you prior to November 5, 1924, that Mr. Campanelli was a fugitive from justice?

Mr. GILLIS.—Just a moment, may it please your Honor, if this is for the purpose of impeachment, I ask the time, place and parties present.

Mr. TULLY.—I have already fixed the time and place.

Mr. GILLIS.—No; you said, “Did you ever”; I want the time, place, and persons present.

Mr. TULLY.—I said prior to November 5.

Mr. GILLI.—That is not fixing the time. [167]

The COURT.—This is not impeachment, because there was no foundation laid for impeachment; it could not be for impeachment, because you cannot impeach a witness without first laying the foundation, and there was no foundation laid for that, but if this man was acting under Oftedal’s authority, or direction, I think the jury is entitled to know what it was.

Mr. TULLY.—That is what I am trying to find out.

Mr. GILLIS.—I wish your Honor to bear in mind the statement of Mr. Oftedal that he was not.

The COURT.—I know. Oftedal testified about that, but that is not conclusive. Some other witness might testify differently, for all I know. If Oftedal sent this man out, or was in communication with him for the purpose of getting Campanelli and have him come to his office, or anything of that

(Testimony of G. Bracini.)

kind, the jury are entitled to know it, in order that they may weigh intelligently the statements that Campanelli made.

A. I think I heard in his office, I don't remember exactly, but I knew that Campanelli was a fugitive from justice.

Mr. TULLY.—Q. You knew he was? A. Yes.

Q. And you say prior to November 5 he came to your house in this city?

A. This is Campanelli, you mean?

Q. Yes, Campanelli.

A. Yes, he came to my house.

Q. Did you take him to the office of Mr. Oftedal? Did you go with him to the office?

A. Yes, I went with Mr. Campanelli to the office of Mr. Oftedal.

Q. Did you take him up there?

A. Yes, first I went alone to Mr. Oftedal.

Q. First you went to Mr. Oftedal's office alone?

A. Yes.

Q. Then you came back and got Mr. Campanelli?

A. Yes.

Q. Well, now, when you brought or when Mr. Campanelli came into Mr. Oftedal's office, who did he see first? A. Mr. Oftedal. [168]

Q. You saw Mr. Oftedal? A. Yes.

Q. What did Mr. Oftedal say?

A. He was joking with him.

Q. Just joking with him? A. Yes.

Q. Coming down to this statement, what was the first thing said with reference to this statement, or

(Testimony of G. Bracini.)

with reference to this alleged conspiracy which is on trial now?

A. On my first visit to Mr. Oftedal's office, Mr. Campanelli waited in the machine while I went up to Mr. Oftedal's office.

Q. You say on your first visit to Mr. Oftedal's office Campanelli was outside in the machine?

A. Yes. I went to Mr. Oftedal and I explained—

Q. (Intg.) What I want is when Mr. Campanelli was present. I am not asking you what conversation you had before that. I want to know when Mr. Campanelli went into the office there with you what conversation took place in there with reference to this statement, or with reference to this alleged conspiracy?

A. Well, he was there to say all the truth, everything he knew about the case.

Q. Did he come right in and make that statement to Mr. Oftedal, or did Mr. Oftedal ask him some questions, or what brought it out?

A. I had first arranged with Mr. Oftedal for reducing the bond of Campanelli.

Q. I see. What was the bond when you first went up to see Mr. Oftedal?

A. I heard it was \$10,000.

Q. You had seen Mr. Oftedal and had the bond reduced to what?

A. To \$2,500. Mr. Oftedal took it up with the District Attorney's Office.

The COURT.—You mean you had Oftedal do it.

(Testimony of G. Bracini.)

You do not mean you had it reduced to \$2,500. Oftedal could not fix the bond.

Mr. TULLY.—No, I understand that, but Mr. Oftedal made an effort to have it reduced, and it was finally reduced to \$2,500. [169]

A. Mr. Oftedal told me that he would take it up with the District Attorney's office.

Q. It was reduced to \$2,500? A. Yes.

Q. What was the first thing that Mr. Oftedal said with reference to making this statement?

A. Well, he said, "Now, Joe, Bracini tells me you are willing to tell the truth. Are you going to tell me the truth, or are you going to tell me a long, rattling story?" And Campanelli said that he was going to tell the truth. Mr. Oftedal asked several questions, one after the other, concerning this "Giulia" case, and Oftedal said, "Joe, suppose we put it down in black and white, and you will sign the affidavit, and I will dictate it to the stenographer in your presence," so he did dictate it to the stenographer and read it over to Mr. Campanelli in my presence and the stenographer's presence, and Campanelli signed it.

Q. That was all that took place, Mr. Bracini?

A. Yes.

Q. Nothing else was said by Mr. Oftedal?

A. Nothing in the presence of Mr. Campanelli.

Q. Nothing in the presence of Mr. Campanelli?

A. No.

Q. Mr. Bracini, did Mr. Oftedal say anything

(Testimony of G. Bracini.)

to Mr. Campanelli that anything he might say might be used against him? A. Oh, yes.

Q. When did he say that?

A. I think before he asked any questions or answered the first time, that was the verbal conversation, but the second time before he took it down.

Q. Before it was taken down? A. Yes.

Q. Did he put that in the statement, do you know? A. I don't remember.

Q. You don't remember? A. No.

Q. Do you know what he said in that regard?

A. Yes, he said that he understood, Campanelli was to understand that any statement he did make might be used against him, the statement given might be used against him. [170]

Q. Did he say anything to Mr. Campanelli about what he would do for him? A. Not a word.

Q. Did he say anything to you?

A. When I went there to Mr. Oftedal alone he told me—I explained to Mr. Oftedal my view, I felt that Campanelli was a minor offender against the law, and I knew Campanelli did not have the brains, and did not have the finances to organize any crime of that nature.

Mr. GILLIS.—I think, may it please the Court, that what this man thinks is immaterial.

The COURT.—Just state what was said.

Mr. GILLIS.—The conversation that transpired between Mr. Oftedal and this man.

(Testimony of G. Bracini.)

Mr. TULLY.—State what you said to Mr. Oftedal, and what he said to you.

Mr. GILLIS.—This is outside of the presence of the defendant.

The COURT.—I know, but this man was acting under Oftedal's instructions.

Mr. GILLIS.—He has not so testified.

Mr. TULLY.—Mr. Oftedal so testified yesterday afternoon.

Mr. GILLIS.—On the contrary, he said just the opposite.

Mr. TULLY.—Q. What did Mr. Oftedal say to

The COURT.—By Oftedal's consent, whether there were instructions, or not.

Mr. TULLY.—Q. What did Mr. Oftedal say to you, and what did you say to Mr. Oftedal?

A. Mr. Oftedal agreed that he thought himself that Campanelli did not have the brains or finances to do anything like that, and told me that the Government looked favorably upon any minor defendant who would come and tell the whole truth, that generally in a case like that, where these minor [171] defendants are of great help to the Government, generally the District Attorney's office is informed of the case, and the case is presented to the presiding Judge, but in any case the Judge is the one that has the final decision.

Q. Did he state to you, or did you state to him, what punishment might be imposed?

A. No, not at that time.

Q. Not at that time? A. No.

(Testimony of G. Bracini.)

Q. Now, after your discussion with Mr. Oftedal, you took the matter up with the defendant Campanelli, did you not? You talked to Mr. Campanelli? A. Oh, yes, on different occasions.

Q. Did you tell him about your interview with Mr. Oftedal? A. Yes.

Q. Then after that you brought Mr. Campanelli up? A. Yes.

Q. Now, did Mr. Oftedal, after this statement of November 5, or whatever date it was, 1924, was signed—did Mr. Oftedal ask you to find Mr. Campanelli again, to bring him in to his office, or anything to that effect?

A. Yes, Mr. Oftedal called me up on the phone and said they were looking for Campanelli, and they could not locate him, and asked me if I could locate him for him.

Q. Did you locate him for Mr. Oftedal?

A. Yes, I did.

Q. Where did you find Mr. Campanelli at that time? A. I think it was at North Beach.

Q. On what street, if you remember?

A. Generally he hangs around Broadway and Columbus Avenue.

Q. Broadway, near Columbus Avenue?

A. That is generally where I located him.

Q. Can you fix approximately that date?

A. No.

Q. You cannot fix approximately that date?

A. No.

Q. You went up and got Mr. Campanelli?

(Testimony of G. Bracini.)

A. Yes.

Q. What did you tell him, when you saw him that time?

A. I told him Mr. Oftedal would like to see him.
[172]

Q. What did Mr. Campanelli say?

A. All right.

Q. He willingly went down to the office with you? A. Yes.

Q. Did Mr. Oftedal tell you before he telephoned you to get Mr. Campanelli what he wanted Mr. Campanelli for? A. No.

Q. He did not mention that at all?

A. No, not when he spoke to me through the telephone.

Q. Did you come in with Mr. Campanelli that time? A. Yes.

Q. When you got into Mr. Oftedal's office, what took place?

A. Mr. Oftedal said, "Now, Joe, you have not told me all the truth, I know you are holding something back, I know"—he said, "We have facts, we know a lot of things that you think we don't know. Now, are you willing to say the truth, or not?" That is all, more or less, that was said. At that Joe answered, "Of course, I am here to say the truth."

Q. Did they have another conversation covering the alleged conspiracy here, or the previous statement made? A. Not that I remember.

Q. They held no conversation there at all?

(Testimony of G. Bracini.)

A. No.

Q. Did Mr. Oftedal prepare another statement, or have prepared another statement there for Mr. Campanelli to sign it?

A. No, there was nothing prepared there.

Q. There was no statement prepared? A. No.

Q. There was not any drawn up at all?

A. No.

Q. Did he give you a copy of any statement to take to the attorney's office, Mr. Campanelli?

A. He gave it to Campanelli.

Q. He gave it to Campanelli? A. Yes.

Q. Now, was that statement drawn up there then?

A. While we were waiting, yes.

Q. While you were waiting?

A. Yes. I was not in the room, with Mr. Oftedal or Mr. Campanelli, I was in the next room. [173]

The COURT.—How many times were you at Oftedal's office with Campanelli?

A. I will say that I have been there two or three times.

The COURT.—My recollection is that Mr. Oftedal testified three times.

Mr. TULLY.—Once in this building, however, your Honor; twice at his office.

The COURT.—Was it at the second visit that Oftedal testified that a copy of the statement was given to the defendant?

Mr. TULLY.—The second visit to Mr. Oftedal's office.

The COURT.—To Oftedal's office.

(Testimony of G. Bracini.)

Mr. TULLY.—Yes.

Q. Were you present, Mr. Bracini, when any part of that statement was drawn up, or were you in another room?

A. I was present, I think, at the beginning.

Q. You mean at the beginning of the questioning, or at the beginning of the preparation of the paper?

A. At the beginning of the preparation of the questioning, and it seems that Campanelli had some secrets that he wanted to give out, and I suggested that I did not want to know his secrets.

Q. And you walked out? A. I walked out.

Q. Did you receive the statement after it was prepared? A. No.

Q. You did not? A. No.

Q. Mr. Oftedal did not read it to you?

A. I am wrong about that, I think he did read the statement to me, in Mr. Campanelli's presence. Campanelli had refused to sign it.

Q. What did he say about signing it?

A. Mr. Campanelli said that his attorney had advised him not to sign anything, and until that time I did not know he had an attorney, and I asked his name, and he said, "Tully." [174]

Q. That was the first time you ever knew he had an attorney?

A. That was the first time I ever knew he had an attorney.

Q. What was said by Mr. Oftedal, if anything, to Mr. Campanelli, or by you to Mr. Oftedal, or by Mr. Oftedal to you with reference to aiding and

(Testimony of G. Bracini.)

assisting Mr. Campanelli if he would execute that statement? A. There never was any agreement.

Q. I do not mean any executed agreement, I mean what was said or done with reference to that matter?

A. I do not understand your question.

Q. All right: Did you say anything to Mr. Oftedal there?

A. I always pleaded for leniency toward Campanelli.

Q. What did you say to Mr. Oftedal, that is what I mean, what I am trying to get at. What did you say to Mr. Oftedal?

A. I always said that in my opinion Campanelli was not as guilty as other people in this transaction here, that he was an uneducated fellow, that he was very honest, that I have known him for years, and he had been struggling for every nickel in an honest way, and if he was involved in anything, I was convinced he was not as guilty as other people involved in the transaction.

Q. What did Mr. Oftedal say that he would do, if anything?

A. He agreed with me that Campanelli was not, or did not have the brains or finances to be the originator of such a conspiracy.

Q. What was said, if anything, with reference to making recommendation as to punishment, or as to what would happen to Mr. Campanelli?

A. Mr. Oftedal always said that the Judge, the presiding Judge, would finally decide anything

(Testimony of G. Bracini.)

about a defendant, but he also said that the Government was always lenient towards the defendants, the minor defendant, that came and made a clean breast of it.

Q. Now, did you say anything to Mr. Oftedal in that regard, as [175] to punishment?

A. You mean at the last visit I had at the office with Mr. Oftedal?

Q. Yes. A. Yes.

Q. What did you say?

A. I said to Mr. Oftedal, "Now, does this case look real bad?" And he did not answer anything, and I said, "Now, this fellow, what shall I do with him? Do you want him to plead guilty, or has he got any line of defense?" Oftedal said he might plead guilty and he might refer the matter to the District Attorney and the District Attorney might turn it over to the presiding Judge, or arrange leniency in his case, and then I suggested in that case probably, I said, he would come out with a fine, a nominal sum of money, probably \$300, and Oftedal said nothing; I thought that was the silent understanding.

Q. You conveyed that information, did you, Mr. Bracini, to Mr. Campanelli?

A. On my own initiative I said to Campanelli, "The best thing you can do is to plead guilty."

The COURT.—Was that before or after he made the statement? A. After he made the statement.

Mr. TULLY.—Q. Had he signed the statement up till that time?

(Testimony of G. Bracini.)

A. No, he refused, on the ground that his attorney advised him not to sign anything.

Q. Now, before you left the office, did Mr. Oftedal say anything to you? A. Not a word.

Q. Did he direct you to go with Mr. Campanelli to the attorney's office?

A. Yes, he said, "Bring this to the attorney's office."

Q. Did you go to the attorney's office?

A. Yes.

Q. You came in with Mr. Campanelli?

A. Yes.

Q. Now, I will ask you on that particular occasion if you did not state— [176]

Mr. GILLIS.—Just a moment. He is cross-examining his own witness.

The COURT.—He can state what he said.

Mr. TULLY.—I am asking whether he said this.

The COURT.—Of course, he is your own witness.

Mr. TULLY.—I understand, but this fellow is a little hostile, I had to subpoena him.

The COURT.—He has not shown any hostility so far.

Mr. TULLY.—Q. Mr. Bracini, I will ask you whether after coming to my office, in the presence of Mr. Campanelli, you did not state—

Mr. GILLIS.—Just a moment, may it please the Court; this is his witness. Ask him what he said.

The COURT.—Yes.

Mr. TULLY.—Q. What did you state with reference to what would be done for Mr. Campanelli?

(Testimony of G. Bracini.)

A. I said in all probability if he pleaded guilty he would come out with a fine, a nominal sum of money, probably \$300, in my opinion.

Q. What did you say, if anything, with reference to having him sign that statement?

A. I never suggested that he sign the statement.

Q. Did you deliver a copy of that statement to me?

A. I said I never suggested to him to sign anything.

Q. Mr. Bracini, if you came to my office after discussing this matter with Mr. Oftedal, concerning the signing of this statement, and you did not come there to discuss the statement, what did you come there to discuss?

Mr. GILLIS.—I think that is immaterial. Let him state what he did, and what was said.

Mr. TULLY.—What was said with reference to this statement in my office?

A. You said that you would not consider it anything at all, and you would not leave any defendant to the mercy [177] of the Government.

Q. I will ask you whether this was not what was said—

Mr. GILLIS.—I object to that.

Mr. TULLY.—He is a hostile witness, and—

Mr. GILLIS.—It has not appeared yet.

The COURT.—He has not shown the slightest intimation of it.

Mr. TULLY.—Q. Was anything said with refer-

(Testimony of G. Bracini.)

ence to calling Mr. Campanelli as a witness in my office? A. Yes, I said it.

Q. You said it? A. Yes.

Q. Was anything said about subpoenaing him?

A. Yes, you said, "Why don't they subpoena him?"

Q. Was he subpoenaed? A. I don't know.

Q. You don't know? A. No.

The COURT.—By the Government?

Mr. TULLY.—Yes.

The COURT.—The Government would not subpoena a defendant whom they had under indictment, I hope.

Mr. GILLIS.—We have not gone that far yet.

Mr. TULLY.—Q. But this was all before the trial? A. Yes.

Q. Did you convey the information back to Mr. Oftedal? A. No.

Q. You did not say a word to him about it?

A. I have not seen Mr. Oftedal, I presume, for probably 20 or 25 days after I was in his office.

Q. You did not report back to him anything that took place there? A. No.

Q. When was the last time you saw Mr. Oftedal?

A. I saw him yesterday, fifteen minutes to two.

Q. Did you see him last evening?

A. Last evening I was in his house.

Q. You were out at his house? A. Yes. [178]

Mr. TULLY.—That is all.

(Testimony of G. Bracini.)

Cross-examination.

Mr. GILLIS.—Q. Mr. Bracini, how long have you known Mr. Campanelli?

A. At least ten years.

Q. At least ten years? A. Yes.

Q. You are a very good friend of his, aren't you?

A. Yes, I am a very good friend of his.

Q. And up to that time you had been a very good, close friend of his? A. Yes.

Q. And when this action was brought and the complaint was filed, his bond was fixed at \$10,000, was it not? A. So I heard.

Q. And Mr. Campanelli came to your house and talked about it?

A. It was half-past eleven that he was in the house, and he said he had no finances, he had no money, and he could not afford possibly to put up \$10,000 bond.

Q. Did he say he knew he would be caught?

A. That is exactly what he told me.

Q. If he could get his bond reduced to \$2500 he would like to do it? A. That is it exactly.

Q. He came to you as his friend to see?

A. There was no specific agreement about \$2,500, he said if I could only have my bond reduced.

Q. To some amount that he could put up?

A. Yes. I asked Campanelli how much bond he could afford to put up, and he said, "Probably \$2,000 or \$2,500."

Q. And he came to you as a friend to get you to help him to get his bond reduced? A. Yes.

(Testimony of G. Bracini.)

Q. And that was the reason why you first went to Mr. Oftedal's office?

A. The only reason I went to Mr. Oftedal's office, to have the bond reduced. [179]

Q. On the solicitation of Mr. Campanelli?

A. On the solicitation of Mr. Campanelli, yes.

Q. When you went to Mr. Oftedal and got to discussing these statements, didn't Mr. Oftedal always tell you—

Mr. TULLY.—Ask him what was said.

Mr. GILLIS.—This is cross-examination.

Mr. TULLY.—All right.

Mr. GILLIS.—Q. Didn't Mr. Oftedal always say that he would not promise Campanelli anything?

A. He always said that he could not promise anything, he had no authority to promise anything.

Q. He had no authority to promise anything, at all? A. No.

Q. That if Campanelli wanted to make a statement and tell what he knew, that he would like to have him tell the truth and get the facts?

A. Yes.

Q. That was always said to Campanelli every time he came to the office, was it not? A. Yes.

Q. Now, so far as being hired by Mr. Oftedal, Mr. Oftedal didn't hire you, did he? A. No.

Q. You did not get any money for it? A. No.

Q. He did not employ you in any way?

A. No.

Q. You did not tell him you were an agent of the Intelligence Unit, or from his office? A. No.

(Testimony of G. Bracini.)

Q. As a matter of fact, all the services that you rendered in the transaction that happened between Mr. Oftedal and Mr. Campanelli were done out of friendship for Mr. Campanelli? A. Yes.

Q. And it was to help Mr. Campanelli out?

A. Yes.

Q. When you went over to Mr. Tully's office and suggested that there might be a fine of \$300, you thought at that time that Campanelli was guilty, didn't you? A. Well, yes, in a minor way.

Q. From the statements he had made?

A. In a minor way, that is the reason I went to the front for him. [180]

Q. You figured, in your own mind, that the best way for Campanelli to do would be to plead guilty and throw himself on the mercy of the Court?

Mr. TULLY.—We object to what was in his own mind. Let him state what was said.

Mr. GILLIS.—I am cross-examining your witness. I have a right to ask it.

The COURT.—Go ahead.

Mr. GILLIS.—Q. That is the reason why you made the statement?

A. I always felt that Martinelli was the tool, was the tissue in the hands of the big fellows.

Q. And you suggested in Mr. Tully's office to Mr. Martinelli that if he pleaded guilty he would probably get off with a light fine?

A. I said he probably would get out with a light fine, they would probably recommend to the District

(Testimony of G. Bracini.)

Attorney's office, clemency to the presiding Judge, and he probably would get out with a fine of \$300.

Q. That is the reason why you said that?

A. That is the reason why I said that.

Q. Mr. Oftedal did not tell you to say that?

A. Absolutely not.

Q. Mr. Oftedal always told you he had no authority?

A. No authority; he always told me no authority, everything rests upon the Court.

Q. Mr. Bracini, as a matter of fact you had talked to Mr. Campanelli prior to going to Mr. Oftedal's office with reference to the time when McMillan was inducing Campanelli to go into this "Giulia" scheme, hadn't you? A. Yes.

Q. And, as a matter of fact, in those conversations with Campanelli you tried to keep Campanelli from going in with McMillan, didn't you?

A. Yes, I said to him once, I told him he had better keep away from these people. [181]

Q. At that time, in your conversation with Campanelli, Campanelli told you that McMillan was trying to get at him.

Mr. TULLY.—I object to that as immaterial, irrelevant and incompetent, and not proper cross-examination.

Mr. GILLIS.—It shows his connection.

The COURT.—I hardly think it is cross-examination.

Mr. TULLY.—Absolutely not.

(Testimony of G. Bracini.)

Mr. GILLIS.—To ask him if he made any statements of that kind.

Mr. TULLY.—I object to it, and assign it as misconduct, and ask that the jury be instructed to disregard it.

The COURT.—I will not give the admonition.

Mr. TULLY.—Exception.

Mr. GILLIS.—I will ask you this, Mr. Bracini: During the times that you were with Mr. Campanelli, when you went to Mr. Oftedal's office, did you have any conversation with Mr. Campanelli along the lines that you had previously warned him not to go into this scheme?

Mr. TULLY.—The same objection.

The COURT.—I think it is competent.

Mr. TULLY.—Exception.

A. Yes.

Q. You told him in those conversations, as you had at this last time, didn't you tell Mr. Campanelli that you said to him, "Didn't I warn you not to go in with McMillan and that crowd?"

A. Yes.

Q. And you told him that if he went in with them he would get into trouble? A. Yes.

Q. And you told him "You had better keep away from them"? A. Yes.

Mr. GILLIS.—That is all.

Redirect Examination. [182]

Mr. TULLY.—Q. Mr. Bracini, do you know Mr. McMillan? A. I saw him once or twice.

Q. Did you ever meet him?

(Testimony of G. Bracini.)

A. I think I met him once, I used to go to a fellow that got a tailor shop right at 17 Columbus Avenue, that is where Campanelli and these other people I don't know were occupying an office.

Q. Is that Guyvan McMillan, that you are speaking of now?

A. No, I am talking about a certain McMillan that seems to be implicated in this "Giulia."

Q. I am speaking now about Guyvan McMillan I want to know whether you know that man?

A. I know one fellow by the name of McMillan that used to stay there at 17 Columbus Avenue.

Q. You don't know whether it was Guyvan McMillan, or who it was?

A. I don't know his first name. I know that his name was McMillan.

Q. I understood you to say that at the time of the second interview, in Mr. Oftedal's office, that Mr. Campanelli had some secrets that he wanted to convey to Mr. Oftedal when you were not present, and you left the room. A. Yes.

Q. You knew nothing about what those secrets were? A. No.

Mr. TULLY.—I think that is all.

Recross-examination.

Mr. GILLIS.—Q. Did you know that the McMillan you knew was the man that was mixed up in the "Giulia" matter? A. Yes.

Mr. GILLIS.—That is all.

Mr. TULLY.—The defendant Campanelli rests,

(Testimony of John O'Hagan.)

your Honor, with the exception that if after the examination of these instruments I desire to recall Mr. Creighton I will reserve that.

The COURT.—Very well. [183]

TESTIMONY OF JOHN O'HAGAN, ONE OF THE DEFENDANTS.

JOHN O'HAGAN, a witness on his own behalf, being duly sworn, testified as follows:

I am thirty-four years old and reside in Liverpool, England. I have been a ship master since 1920 and been following the sea for an occupation since I was 16 years of age. Before April, 1924, I was working for the Associated Oil Company. I left San Pedro and came to San Francisco. I passed by the British Consulate and asked if there were any British ships in port that required a master, and was referred by the Consul to Mr. McMillan who recently purchased a ship. I went to the address given by him at 17 Columbus Avenue and there met Mr. McMillan. Mr. McMillan informed me that he intended to send a cargo of canned goods from San Francisco to Havana, Cuba, and that his ship was in the Los Angeles Drydock, and asked me to go down and inspect the vessel. On April 29th I left San Francisco and went to Los Angeles. McMillan arrived ten or eleven days afterwards. Repairs were then being made on the vessel. He told me it was not necessary for me to engage a crew, that he had already engaged a crew in

(Testimony of John O'Hagan.)

San Francisco. He arrived in Los Angeles with the crew. The ship was called the "Giulia." I left Los Angeles harbor on May 24th in the vessel. I proceeded to Panama City for the purpose of procuring a provisional Panamanian registry at that time. It would have taken several months to procure the British registry of the ship and for that reason it was registered under the Panamanian flag with Guyvan McMillan appearing as owner. The document offered into evidence is the registration of the ship "Giulia" under the Panamanian flag. I left Panama and proceeded to Havana, Cuba, and was advised there for the first time that a cargo of liquor was to be loaded on the vessel. My copy of the bill of lading as to the contents of the [184] cargo has already been offered as evidence. I insisted that the following clause be placed in the bill of lading: "Consignees will have option, weather permitting to take delivery on the high seas, but in no case and under no circumstances is delivery to be made within 20 miles of any territory, and then only on the Pacific Coast within a radius of a line drawn due west of San Diego and a line due west of Seattle, always at least 25 miles from such described coasts or territories. All island territories within this described area to be taken as the measurement point for such deliveries, if made, in order to conform with a recent treaty made between Great Britain and the United States of America. Also, should

(Testimony of John O'Hagan.)

the maximum speed of any vessel taking delivery be more than 15 knots per hour, such excess speed must be added to the delivery distance from the within described area." I had the clause inserted in the bill of lading for my own protection and I did not desire to violate the laws of the United States. I believed I was entitled to deliver the cargo outside the three mile limit, but to protect myself I insisted on this clause being put in and the distance extended to 20 miles off shore. I sailed from Havana, Cuba, with Vancouver, B. C., as my destination, but I received instructions from my supercargo, who was on board the vessel. I was instructed in Havana that he would give me definite instructions at Mazatlan as to any point or position where I was to deliver cargo. If the supercargo had ordered me to deliver cargo within the territorial waters of the United States I would have disregarded his orders. I lived up to the clause in my manifest to the letter. I had to call at Mazatlan for coal. While there a fire broke out and damaged the vessel. After leaving Mazatlan I had bad weather all the way up until I arrived at a position which was given me by the purser at Mazatlan, which to the best of my recollection was about 30 miles west of Halfmoon Bay. By this time my coal was [185] exhausted, my food running short, and I was compelled to run back under sail to Ensenada. On the way down I hailed a small boat and asked them to send a

(Testimony of John O'Hagan.)

telegram for me to 17 Columbus Avenue, addressed to Mr. McMillan, because Mr. McMillan was the only man I recognized as owner of the ship and his name appeared upon all the documents in my possession as owner of the ship. The cable was sent from Ensenada by the purser and eventually Mr. Campanelli arrived in Ensenada in company with his brother or cousin. Negotiations were entered into by someone and I received from the steamer "Gryme" about 700 sacks of coal, which was just sufficient to bring me back to the Farallones. When I arrived at my new position no boat was there, but eventually I received 30 or 40 sacks of coal. I made delivery of cargo on the high seas to two boats, but I can't remember especially the occasions. The first boat that came alongside delivered coal. I do not recall whether it took off any liquor. The supercargo or purser deserted the boat as soon as the coal was delivered and returned on the boat that brought out the coal. I received some coal from a boat in the vicinity of Pt. Reyes. I met that boat about 25 or possibly 30 miles west of the Farallones. It was sent out to give me coal. The weather was too rough to load the coal on the "Giulia" in that position and after consultation with the captain of the "Shark" it was decided we should go inside Pt. Reyes. My boat was absolutely out of fuel by the time the "Shark" arrived and could not have proceeded any distance in that condition. I had only

(Testimony of John O'Hagan.)

enough coal for a couple hours steaming and only about 130 or 140 pounds of steam in the boilers. Had I not received the coal from the "Shark" my boat and all of us would have been in great jeopardy. I could take on at that point only a few sacks of coal, sufficient to steam into Pt. Reyes. An effort was made to coal at sea, but it was so rough that the bulwarks of my ship and the bulwarks of the "Shark" were getting [186] smashed in so badly that we decided to steam under the lee of Pt. Reyes. It was absolutely necessary to go into Pt. Reyes in my belief. According to maritime law or international law, so far as I know, I was entitled to go into that cove and coal under those circumstances. The "Shark" did not take any cargo off my boat. I would not have permitted it. The captain of the "Shark" requested a few cases for his own consumption, but I would not permit the delivery of it. After the "Shark" left I proceeded to my position again 25 or 30 miles west of the Farallones. The fuel received would last me between 26 and 27 days. That was the last coal I received. I received some water from the "Shark." I received a small quantity of provisions about 25 or 26 days before I abandoned the ship.

On October 24, 1924, I abandoned the ship. At that time my coal was absolutely gone. I think it was about six weeks after I had received the coal from the "Shark." We did not have

(Testimony of John O'Hagan.)

enough provisions on board to last for 20 minutes; we were absolutely starved and hungry. We had been without provisions for four or five days. The water on the ship was muddy and dirty and I was at the bottom of my tank and everybody was sick and complained. Nobody had had a wash for 17 days on board the vessel. We were so afraid of the water that we would not use for washing. We had no doctor or physician on board. My condition was very bad and I had been drinking champagne instead of water and I was in a very nervous condition. The crew wanted me to abandon the ship 10 or 12 days before I actually did, on account of the shortage of provisions and water, but I prevailed upon them to stay until conditions got so bad that I finally consented and we abandoned the ship. I abandoned the ship about 19 miles west of Pt. Estreros. My crew got into life-boats, the first engineer and myself went down to the engine-room and opened the seacocks and he came on deck and went into a [187] life-boat. I went around the ship to make sure that the vessel would not float and remained aboard about half an hour. I sunk the vessel because I did not want to leave a floating derelict on the ocean and thus create a menace to navigation or to other property afloat. The vessel actually sunk. Four or five hours afterwards we were picked up by the steamer "Brookings" and came into San Francisco on it. When we arrived in San Fran-

(Testimony of John O'Hagan.)

cisco at the quarantine station we were surrounded by a bunch of immigration officials and custom agents and I handed my papers to Mr. Creighton. I first saw Mr. Creighton on the "Brookings." He was the first Government official I met. Mr. Enlow picked up my papers and with Mr. Creighton took me into the pilot-house where they began to question me. Mr. Enlow said "Captain, you are in a pretty bad jam. We know a whole lot more about this business than you think and you had better tell us all that you know." Mr. Creighton told me he was prepared to help me out. He said he didn't want to jam us as we had enough of our own trouble; he was not after us but he was after the big fry. He asked me at that time whether this ship belonged to DeMaria. Until the beginning of this trial I had no idea of the identity of Mr. DeMaria. Mr. Creighton promised to assist me all he could and he told me to make a statement and tell all I knew and we will see that you people get fair play. Mr. Creighton also said I will see that you and the crew get your wages from Mr. McMillan. When I signed the statement for Mr. Creighton I was in a very bad physical condition. That is my signature on the statement, but I would hardly recognize it. The statement was signed in the custom-house in the evening. When I arrived at the custom-house I was an absolute wreck. He told me that he did not want the statement to use against me; that it was to get the higher-ups.

(Testimony of John O'Hagan.)

Mr. Creighton came over to see me later when I was at Angel Island, after the indictment was [188] returned against all the defendants in this case. Mr. Creighton was the only man I had any dealings with after I arrived in San Francisco, so I phoned to Mr. Creighton and asked him if he had apprehended Mr. McMillan, because I wanted my wages for myself and crew so that I might obtain legal assistance for myself and my crew. On that occasion Mr. Creighton recommended an attorney by the name of J. H. Morris. Mr. Morris afterwards came and interviewed me and told me that he represented one of the defendants by the name of Alioto already and that he would secure for me the same immunities he had secured for Alioto. I asked him what the immunity was and he said Alioto had his boat returned to him. Mr. Morris asked me to come into court and plead guilty. Up until this day I cannot see where I am guilty of any conspiracy. At that time I could not see it. Mr. Morris appeared for me at the time of my plea and upon my suggestions Judge Partridge was informed that Mr. Morris was not in a position to represent me further in this case. I was employed by Mr. McMillan at a salary of \$240. a month. I am familiar with the wages usually paid the master of a vessel of the class of the "Giulia." The wage usually paid is between \$350 and \$400 a month. I was actually getting less than the normal wage. I have not received

(Testimony of John O'Hagan.)

my wages due me. I drew a few dollars in each port for personal expenses. I do not suppose the total would amount to \$200. Some of the crew received part payment of their wages. McMillan hired the crew with the exception of those that were engaged in Cuba. None of the crew who are defendants here were capable of navigating the ship "Giulia." As master the crew was strictly under my orders and I told them they were bound for Vancouver, British Columbia. I took them into the Panamanian Consul at Havana and there read the articles over with them and they knew we were to proceed from Havana to Vancouver. I did not see DeMaria in Los Angeles or Havana or Mazatlan. I did [189] meet DeMaria in a saloon in Ensenada. I met him in Quinlan's saloon. I did not discuss with DeMaria the matter relative to the "Giulia's" cargo or the coaling of the "Giulia." I never heard of DeMaria having any interest in the boat "Giulia" or the cargo until Mr. Creighton asked me the question.

When I returned to Ensenada, Mexico, for coal I got in touch with the purser, Joe Gerbaudo, and he negotiated for it. He informed me that all negotiations were consummated for the coal, which would be brought down by the "Gryme." Mr. Campanelli did not bring any provisions or coal. I saw Mr. Campanelli the last afternoon I was in Ensenada, eating a lot of watermelon. I arranged the registering of the "Giulia" under

(Testimony of John O'Hagan.)

the Panamanian flag through a lawyer by the name of Morales. At the time of the registration I filed the original bill of sale I carried down with me. I got a certified copy of the bill of sale. The instrument marked Defendant's Exhibit "F" was a copy I procured.

Cross-examination.

When I got off the "Brookings" the first place I landed was on the deck of the coast guard cutter. When we landed in San Francisco I walked up to the Custom-house with Mr. Creighton and had breakfast with him. That was the same day the statement was signed. I objected on several occasions during the day to cross-examination and asked Mr. Creighton to let me see a doctor because I was feeling very bad, but Mr. Creighton evaded the issue all the time and kept on detaining me. They continued to harass me and worry me so that I was in a terrible state and they kept me in the custom-house to four or four thirty in the afternoon and I signed the statement because I wanted to get rid of Mr. Creighton and Mr. Enlow harassing me all the time. I went out about one o'clock with two men, but I had no lunch. Mr. Creighton told me he was not after me or the crew at [190] all, and sympathized with us most heartily, but that he was after the higher-ups in the matter.

I first met Mr. McMillan at 17 Columbus Avenue, which is not in the British Consulate. I met Mr. Campanelli at the same address. He was in com-

(Testimony of John O'Hagan.)

pany with Mr. McMillan on the second visit. There was no formal introduction. We just started to talk. I never had a formal introduction to Campanelli. I did not meet Mr. Henderson there. I met another gentleman there—I haven't seen him from that day to this. I discussed the "Giulia" on the first occasion with Mr. McMillan solely. On the second occasion I met Mr. Campanelli and I believe I discussed the "Giulia" at that time. Mr. Campanelli did not give me the impression that he had any interest in this ship, but was merely acting under instructions from McMillan. Shortly after I went down to look at the boat Mr. Campanelli and Mr. McMillan showed up in Los Angeles and I met them there. Most of the time they were separate. Mr. Campanelli left before we sailed. McMillan remained there until the day we sailed. I did not talk to Campanelli about the register of the ship, but with Mr. McMillan. I did not discuss registering the ship under the American flag. McMillan decided what flag it was to be registered under. McMillan in Los Angeles effected all negotiations for the transfer of the flag with the Panamanian Consul there. I was called up to sign a couple of documents, that was all. McMillan secured the instrument known as Defendant's Exhibit "F" and his signature is signed on it.

When I went to Havana I saw Mr. Henderson, a man named Stevens, a man named Holmes, and Campanelli. McMillan was not there. Mr. Mc-

(Testimony of John O'Hagan.)

Millan told me I was to take instructions from Campanelli. On the first occasion I met Mr. Henderson and Mr. Henderson at that time took absolute charge of the loading of the ship. He seemed to have all the say with regard to the disposition [191] of the cargo and everything else. Campanelli informed me that Henderson was the boss. I went down to Havana with coal in my two hatches. McMillan did not tell me what kind of a cargo I was to pick up in Havana. He told me when he first engaged me that he was negotiating for a cargo of canned food for Cuba and that he probably would take sugar back.

Holmes was introduced to me and I was informed that Holmes was to be consignee of the cargo in Vancouver, B. C. I did not discuss with Holmes the delivery of the cargo. The bill of lading was drawn up in the Anglo Cuban Steamship Co. They were the agents of the consignors. The same day it was drawn up the clause with reference to the delivery on the high seas was put in. They put it in at my instruction. Before that was put in the bill of lading the manifest showed that the cargo was to be delivered at Vancouver in transit for Hongkong. Mr. Henderson was the first man to inform me of the possibility of delivery of parcels on the high seas. I told him I would not do anything which was a violation of the Prohibition Act of the United States. He discussed the matter with Mr. Holmes and Mr. Holmes told me to take my instructions regarding delivery of the cargo from

(Testimony of John O'Hagan.)

my supercargo. He directed that I be guided entirely with reference to the delivery of this liquor by Gerbaudo. I believe Campanelli was at Havana until after the ship left. At Mazatlan the supercargo gave me directions to take a position about 30 miles west of Halfmoon Bay, as I would be met there with coal, and that the boat might possibly take some of the cargo. I proceeded to the position that I was directed to and was compelled to return to Ensenada for coal. I was at Ensenada possibly three days before I saw Campanelli. I think I met Campanelli in town on the first occasion; I am not sure. I told him the situation I was in. Campanelli and my supercargo discussed the matter in Italian, which I do not understand. The supercargo [192] informed me that arrangements were made to bring coal down from San Diego. Canpanelli came back with us on the boat—back to San Francisco. The first vessel brought coal. More coal came out later. Gerbaudo left on the first boat. Campanelli also left. The same day that Gerbaudo left, Henderson came on board with his wife. He stated there about three weeks. About six or seven loads of cargo were removed from the vessel under Henderson's instructions. When we took on the coal from the "Shark" we were within the territorial waters of the United States. I had many disputes with Henderson. I told Gerbaudo that when I got the coal which was promised me in Mazatlan I was going to proceed direct to Vancouver, but Henderson came out and he was aware

(Testimony of John O'Hagan.)

I was going to Vancouver and he persuaded me to remain a day or two while he got some things. His wife came on board with him and I did not like to go to Vancouver with a lady on board, and I remained out there. After 12 or 14 days we started to drift. Henderson and his wife went back to shore before we started to drift. I advised him to take his wife off the vessel because we were in a precarious condition. I had four rifles, a quantity of revolvers, and a machine gun on board. McMillan sent them down to the vessel before we left San Pedro. They were all eventually thrown overboard. I received no money in Ensenada. The supercargo received the money. When the purser left the vessel at San Francisco there was \$130 on board. I met De Maria in Quinlan's saloon in Ensenada. Campanelli was not with him. My purser was with him on that occasion.

Redirect Examination.

Of the four rifles carried on board, one was my private property, which I always carried. It is customary on sailing vessels and ships of this class engaged in the merchant marine service to carry rifles, especially since the war. There is usually [193] one rifle for every officer on a vessel. There are usually three mates and two or three engineers. When I got to Havana I took my orders from Mr. Henderson, and not from Mr. Campanelli. When I arrived in Havana Mr. Campanelli seemed to have lost all authority and Henderson was in charge. Mr. Campanelli did not direct me to load the ship.

(Testimony of John O'Hagan.)

Mr. Campanelli gave me no money in Ensenada and no orders.

Recross-examination.

I followed the direction of Mr. Henderson in Havana because Mr. Campanelli told me that he was the boss. [194]

TESTIMONY OF H. S. CREIGHTON, RECALLED IN REBUTTAL AS A WITNESS FOR THE UNITED STATES.

H. S. CREIGHTON, called on behalf of the United States, being first duly sworn, testified as follows:

I heard the testimony of Captain O'Hagan, with reference to certain promises made by me to him. I did not make any promises to him. Some time after October 25th, he telephoned to me and asked me if something could not be done whereby his case could be disposed of, instead of his being held indefinitely. He told me he didn't know anybody in San Francisco but me. He asked me if I knew a lawyer. I mentioned the name of Mr. Morris to him, and, after consulting a telephone directory, gave him Mr. Morris's telephone number.

Cross-examination.

Mr. Morris had consulted me before with reference to the release of the boat called the "Nat" which had been seized for the alleged smuggling of liquor. Mr. Morris was the attorney for the owner of the boat, Mr. Aliotos, a witness in this case. Captain

(Testimony of H. S. Creighton.)

Herman of the "Nat" stated to me that he had carried liquor into the port on the "Nat," and I know that he was never indicted, and no steps have been taken to forfeit the boat "Nat." I did not recommend Mr. Morris to Mr. Campanelli as an attorney. Mr. Morris told me at one time that he had talked with the defendant Campanelli. [195]

TESTIMONY OF J. H. MORRIS, CALLED ON
BEHALF OF THE UNITED STATES.

J. H. MORRIS, a witness called on behalf of the United States being duly sworn, testified as follows:

I am an Attorney at Law and practiced in San Francisco for about 18 years. I received a telephone communication from Captain O'Hagan from Angel Island. He asked me to come and see him. In the conversation I had with him I did not tell him that I would get him the same immunities as I got for Alioto, or any words to that effect.

TESTIMONY OF J. G. KENNY, CALLED ON
BEHALF OF THE UNITED STATES.

J. G. KENNY, a witness called on behalf of the United States being duly sworn, testified as follows:

I am the Entrance and Clearance Clerk in the Collector's Office, and have charge of the reports of Masters of Vessels in port. I have examined the records to see whether or not Captain O'Hagan, as captain of the "Giulia," reported on the 15th, 16th, 17th and 18th day of September with reference to

(Testimony of J. G. Kenny.)

being in distress on this coast line and have found no report. The law is silent with reference to reporting vessels in distress, but any vessel coming into the jurisdiction of the Customs District has to report if they are coming into port for 24 hours, unless they are coming in for fuel only.

Cross-examination.

If the boat was at the bottom of the sea I do not know whether the captain would have to report it.

Thereupon the Government rested its case and Wilford H. Tully, on behalf of the defendant G. Campanelli, renewed all the motions heretofore made and the Court made its order denying said motions to which the defendant duly and regularly excepted. [196]

CHARGE TO THE JURY.

The COURT (Orally).—Now, Gentlemen of the Jury, you have heard the testimony in this case, protracted as it has been, and the argument of counsel, the narration of the facts and their conclusions drawn therefrom. It now becomes the duty of the Court to state as briefly as it may the issues which you are to determine, and the rules of law by which you are to be guided in arriving at your verdict.

In a case of this character, the court and jury have separate functions to perform. It is the duty of the Court to pass upon all questions of law and advise the jury as to the rules by which they are governed in arriving at their verdict, and it is your

duty to accept as law whatever the Court states to you to be the law, whether it meets with your approval or not. If at any time the Court is in error or has committed an error in its ruling, there is a tribunal organized and constituted for the purpose of curing that error; but if you should assume to decide a question of law and decide erroneously, there would be no remedy, and no method of correcting the error. So that is your duty to take the law as given to you by the Court. It is, however, your duty and your exclusive province to pass upon all questions of fact in the case, and to draw all conclusions and references from the testimony; and the Court has no more right to invade your province and attempt to determine a question of fact than you have to evade its province and attempt to determine a question of law. The responsibility for the law of the case is upon the Court, but the responsibility for the facts and the conclusions drawn therefrom are upon the jury.

The case on trial is based on an indictment returned by the Federal Grand Jury of this district in November of last year, charging some 24 individuals with the crime of conspiring and confederating together to violate a law of the United States; 15 only of those individuals are on trial. Of this number, 12 are members of the crew of the steamer "Giulia," one O'Hagan was the captain of the steamer, and the other two defendants are Campanelli, whom I think [197] you will have no difficulty, from the evidence, in identifying, and De Maria. For the purpose of identification only, you

will recall that De Maria was the man whom the Government claims purchased coal for this vessel at San Diego, and Campanelli was the man whom the Government claims was present at the conference between the Captain and McMillan in this city, at the time the arrangement was made for the captain to take charge of this boat, and was at San Diego at the time the boat was purchased, and in Havana when it was loaded. I state this simply for the purpose of identification, and not as any indication of what the proof is in regard to these matters.

This indictment is brought under section 37 of the Penal Code, which reads:

“If two or more persons conspire either to commit an offense against the United States, or defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished, if convicted,” as in the statute provided. It is under that section that this indictment was framed. These defendants are not charged with a violation of any of the prohibition laws of the United States, nor are they charged with smuggling goods into the United States, but the specific charge against them is that they entered into an agreement to do these things, and that in furtherance of that agreement one or more of the conspirators performed some of the acts for the purpose of accomplishing it.

It is important, therefore, at the outset, that you should have a clear conception of what is constituted a crime under this section, and of the evidence necessary to establish it. I, therefore, repeat the statute. It is that if two or more persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties thereto shall be guilty of a crime. You will observe that there are three essential elements necessary to constitute a crime under this statute. First, there must be the act of [198] two or more persons conspiring and confederating together. One person, of course, cannot conspire himself, and, therefore, there must be at least two persons acting together to constitute a conspiracy. Second, it must appear that the purpose of the conspiracy was to commit an offense against the United States, that is, to violate some law of the United States. And, third, one or more of the conspirators, after the conspiracy has been formed, and during its existence, must do some act to effect the object thereof. Each of these acts is an essential ingredient of the crime charged, and must be established to your satisfaction and beyond a reasonable doubt before you can find a verdict of guilty. But if those three elements are established, then the crime of conspiracy is complete, regardless of the fact as to whether the purpose of it was accomplished, or not.

By *was* of illustration, and illustration only, if two persons should enter into a conspiracy or agree-

ment to violate, we will say, the prohibition law by the possession of *an* dealing in intoxicating liquors, and one of such persons, in pursuance of that agreement, and during its existence, should rent a room and fit it up for the purpose of engaging in this business, the crime of conspiracy would be complete, and they would be guilty of conspiracy, although, as a matter of fact, they never possessed any intoxicating liquors or sold them. So that it is important to keep that in view in a case of this character, that it is not the substantive offense that these defendants are charged with, but it is conspiracy or agreement to commit that offense, and the performance of some act in furtherance of that agreement.

Now, taking these up in their order: A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or an unlawful purpose. A common design is the essence of a conspiracy, and it is, therefore, necessary, in order to prove a conspiracy, for the evidence to show a combination of two or more persons by concerted action to accomplish a criminal purpose. It is not necessary, however, for the Government to prove that such parties met together and entered into an explicit or formal agreement to that effect, or that they directly, by word or in writing, stated what the unlawful [199] scheme was to be, or the details of the plan or means by which it is to be made effective. A conspiracy may be, and usually is, shown and proven by circumstances. Persons who contemplate committing a crime do not ordin-

arily place their intentions in writing, or enter into any formal agreement for that purpose, but their agreement or understanding is generally to be determined from their acts and their conduct, and the entire circumstances surrounding their relationship and the transaction. Guilty connection with a conspiracy may be established by showing the association of the persons accused in and for the purpose of prosecuting the illegal object. It is enough if the minds of the parties met understandingly, so as to bring about an intelligent and deliberate agreement to do the acts and commit the offense charged, although such agreement be not manifest by formal words. While the conspiracy may be proven by circumstantial evidence, yet the circumstances relied on for the proof must be such as to show that there was a common agreement or understanding, and the mere fact that two or more persons on different occasions did acts of similar nature, looking toward the same end, or result, would not constitute, as a matter of law, a conspiracy, unless there was a common design and intention. The evidence must show that the parties accused, and each of them, agreed and confederated together to do the acts charged. In other words, there must be a co-operation and concert of action. Each party to the conspiracy must be actuated by the intent to pursue a common design, but each may perform separate acts or hold distinct relations in promoting such design. That is, if two or more persons pursue, by their acts, the same object by the same means, one performing one part and another

another part, so as to complete it with a view to attaining the object they are pursuing, that would be sufficient to constitute a conspiracy. Nor is it necessary that the conspirators should be acquainted with each other, or that each should know the exact part to be performed by the other in execution of the common design. It is enough if two or more persons in any manner or through any contrivance positively or tacitly come to a mutual understanding to accomplish a common unlawful design. In other words, where [200] persons, actuated by a common purpose to accomplish that end, work together in any way in pursuance of the unlawful scheme, every one of such persons becomes a member of the conspiracy, although the part that he is to take therein is a subordinate one, and is to be executed at a remote distance from the other conspirators.

Again, one who, after a conspiracy is formed, with knowledge of its existence, joins therein and aids and participates in its execution, becomes as much a party thereto from that time as if he had been an original conspirator. Furthermore, where two or more persons are proven to have combined and confederated together for some illegal purpose, any act done by one of the conspirators during the pendency of the conspiracy, with the common design of furthering the common object, is, in law, the act of all; and, therefore, proof of such act will be evidence against any one of the others who is engaged at that time in the same conspiracy.

It is also true that any declaration of one of the conspirators in furtherance of the conspiracy, or in the execution thereof during the pendency thereof, is not only evidence against himself, but evidence against the other parties then members of the conspiracy, who are as much responsible for such declarations and acts to which it relates as if made or committed by them. This rule applies to the declarations and acts of a conspirator, although he may not be under prosecution or on trial; but his declarations and acts, if made in furtherance of the conspiracy, are equally admissible with those of the parties under indictment and being tried; but the declaration of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration. One cannot be made a member of a conspiracy except by his own conscious act, and not by the acts and declarations of another.

Now, the second element of the crime charged is that the conspiracy had for its purpose to commit an offense against the United States. The laws of the United States make it a crime for any person to possess, deal in, or dispose [201] of intoxicating liquor, and it is also a crime to import intoxicating liquors into the United States, and the charge in this case is that this conspiracy was formed for the purpose of violating those laws.

The third essential element of the crime charged is that one or more of the conspirators did, after the conspiracy was formed, and during its existence, do some act to effect the object thereof.

Now, with these general observations, we come to the particular crime charged against the defendants, and that is to be determined by the terms of this indictment. It charges, after setting out the law of the United States, which makes it a crime to deal in intoxicating liquors, and forbids the importation of intoxicating liquors into this country, that on or about the 1st of February, 1924, the exact date being to the grand jurors unknown, these several defendants named in the indictment, including not only the fifteen on trial, but the nine that are not on trial, entered into a conspiracy to violate the prohibition laws of the United States, and to violate the laws prohibiting the importation of intoxicating liquors. It is charged that that conspiracy continued and was in force at the time of the alleged commission of the overt acts herein charged. It is then charged in the indictment that in pursuance of this conspiracy, and for the purpose of effecting the objects thereof, these defendants did, in the month of July, 1924, cause the steamer "Giulia" to be loaded with intoxicating liquors at Havana, Cuba, and to sail from Havana, Cuba, destined for the waters off San Francisco Harbor; and it is also charged that after the boat arrived off the harbor certain liquors were delivered to a boat called the "Gnat"—two deliveries, I believe, to the "Gnat," and one to a boat called the "Shark"; and the loading of the "Giulia" at Havana, the delivery of liquor from the "Giulia" to the "Gnat" off the harbor of San Francisco, and the alleged delivery of the

liquor to the "Shark" off the harbor are the overt acts charged in the indictment.

Now, the first question for you to determine in this case is whether [202] or not two or more of the parties charged in this indictment entered into a conspiracy or agreement to violate the laws of the United States by dealing in intoxicating liquors, or by importing them into this country, in violation of law; and, second, whether one or more of the conspirators did one or more of the acts charged in this indictment for the purpose of carrying that conspiracy into effect. If you find and believe beyond a reasonable doubt as I shall hereafter define that term to you, that such a conspiracy was formed by two or more of the parties charged in the indictment, whether they are on trial or not, and that the object of the conspiracy was to violate the laws of the United States as charged in the indictment, and that one or more of the conspirators during its existence did one or more of the acts charged in the indictment in furtherance of that conspiracy, then it will be necessary for you to determine whether or not the parties now on trial were parties to such conspiracy, either at its inception or became parties thereto afterwards, with knowledge of its purpose. If they were parties at the time of the conception of the conspiracy, then, of course, they would be guilty of a violation of the law if the overt acts were performed by any one of the conspirators. If they were not parties at the time of the inception of the conspiracy, but afterwards became a party, knowing the purpose and

object of the conspiracy, and thereafter participated in for the purpose of carrying it out, they would become parties to the conspiracy from that time on, and liable just the same after that as if they had been one of the original conspirators.

Now, the defendants in this case have each entered pleas of not guilty. This is a criminal case. Their pleas puts in issue every material allegation of the indictment, and imposes upon the Government the burden of proving the essential allegations to your satisfaction and beyond a reasonable doubt before you would be justified in finding any of them guilty. At the beginning of this trial they were each clothed with a presumption of innocence, and that presumption continues with them throughout the trial, until it is overcome by the testimony. It is not incumbent on a defendant in a criminal case to [203] prove his innocence, but it is incumbent on the Government to prove his guilt, and that to the satisfaction of the jury beyond a reasonable *doubt*.

Now, by reasonable doubt I do not mean a mere captious doubt, and I do not mean such a doubt as a juror might conjure up in his own mind, based upon his non-approval of the law under which the prosecution is had, or upon the argument of counsel, or upon any matters of that kind, but I mean a real, substantial doubt, based either upon the testimony or the want of testimony, such a doubt as would cause a reasonably prudent man to hesitate to act in his own important affairs. If, after you have considered all of this evidence, you enter-

tain such a doubt, then you should give the defendants the benefit of that doubt and an acquittal. If, on the other hand, you do not, then it is your duty to find in favor of the Government.

Now, the indictment in this case charges a specific offense, and it is upon that charge that these parties are on trial. As I stated to you at the beginning, they are not on trial for violating the prohibition law, they are not on trial for dealing in intoxicating liquors, they are not on trial for buying intoxicating liquors, and they are not on trial for importing intoxicating liquors into the United States, but they are on trial under an indictment charging them with a conspiracy or an agreement to commit such offenses, and, therefore, the mere fact, if it is a fact, that one of the defendants may have purchased liquor from some of the other defendants, or some unknown person, would not be sufficient to warrant a conviction of conspiracy. A person or persons purchasing liquor which is being illegally sold does not by this act alone become guilty of the offense of conspiracy, it must appear that he was co-operating in the unlawful design and the unlawful purpose of the conspiracy.

Now, gentlemen, you are the exclusive judges of the credibility of the witnesses, and the exclusive judges of all questions of fact in this case. Every witness is presumed to speak the truth. The law assumes that every person who comes into Court and takes an oath to tell the truth, the whole [204] truth, and nothing but the truth, does so. This presumption, however, may be overcome by the

manner in which a witness testifies, by his appearance on the witness-stand, or by contradictory testimony. You have heard these witnesses, you have noticed their appearance on the witness-stand, and now it is for you, and you alone, to say what weight should be given to the testimony of each and every one of them. Under your oaths, you are to take into consideration only such evidence as has been admitted by the Court, and you should, in obedience to your oaths, disregard and discard from your mind every impression or idea suggested by questions asked by counsel which were objected to, to which objections were sustained. The defendants are to be tried only on the evidence that is before you, and not on suspicions that may have been excited by questions of counsel, answers to which were not permitted or which were stricken out by the Court. And I caution you to distinguish carefully between the testimony offered here by a witness on the stand and statements and arguments made by counsel as to what facts have been proven. If there is a variance between the two, you must, in arriving at your verdict, consider only the facts testified to by the witnesses, and the evidence offered and admitted, together with the instructions of the Court. Your personal opinion as to facts not proved cannot in any manner be considered or used by you as a basis for your verdict. You may believe, as men that certain facts exist, but, as jurors, you can only act upon the evidence introduced upon this trial, and from that evidence, and that alone, under the instructions of the Court, you must find your ver-

dict, unaided, unassisted, uninfluenced by any opinion, or presumption, or belief you might have, except the presumption of innocence, not formed from the testimony. Mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of the evidence supports the allegation of the indictment, nor is it sufficient that upon the doctrine of chance it is more probable that the defendants are guilty than that any are innocent; to warrant a conviction, the defendants must be proved to be guilty clearly and beyond a reasonable doubt. [205] If there is any reasonable theory upon which you can reconcile the evidence, consistent with the innocence of the defendants, it is your duty to do so.

If, as I have stated to you, it should appear beyond a reasonable doubt that some of the things charged as overt acts in this indictment were committed by particular defendants, and they were, themselves, in violation of the law, the commission of such acts, standing alone, is not sufficient, of itself, to warrant a conviction, unless you also find, beyond a reasonable doubt, that such act or acts were performed to effect the object of the conspiracy then existing, as charged, and to which conspiracy the defendant or defendants performing such act or acts was or were at that time a party. Briefly, this means that no overt act by any of the defendants is sufficient to warrant a conviction of himself or any of the other defendants, unless you find that a conspiracy existed, as charged, and that

such act was performed to effect the object of the conspiracy.

Now, the fact that some of the defendants have not testified in their own behalf in this trial should not be considered or construed by you as against them, and you are not at liberty to indulge in any unfavorable presumption or inference because they have not testified. The indictment is not evidence, and it should not be considered by this jury as evidence; it is a formal matter provided by law, by which a defendant accused of crime may be put on trial; its purpose is to inform a defendant of the particular charge made against him, so that he may come into court prepared to meet it, and to advise the Court and jury of the issues which they are expected to determine.

Now, there was testimony introduced in this case of a man by the name of Alioto, as I recall his name; he was the owner, or alleged to have been the owner of a boat that he testified was hired by one of these defendants for the purpose of sending out supplies to this boat and bringing liquor in. Now that, of course, was a violation of law, and in weighing Alioto's testimony it is important for the jury to keep that fact in mind; and, so far as his testimony contradicted, it would be your duty to scrutinize it with care and [206] caution, because of the circumstances under which this arrangement was made, and the subsequent acts and conduct of the Government officers with relation to Alioto. So far as I recall—I may be in error about it, and if I am you are not to accept my statement—but so far

as I am concerned there was no contradiction of Alioto's testimony. Of course, if you think he was telling an absolute untruth, perjuring himself on the witness-stand, you would have the power to disregard his testimony entirely.

There was introduced during the trial numerous statements or alleged statements made by various defendants to the Government officers. These statements were made after this conspiracy, if any, was ended, and, therefore, the statements made by these individuals are not evidence against anybody except themselves; and, as I tried to point out to you numerous times during the trial, you will not consider as evidence against anyone else any statements that they may have made tending to implicate some other person. You can readily understand that it would be a very dangerous rule to permit a man who had been arrested for a crime to implicate other people by statements that were made at that time, and, for that reason, the evidence should be disregarded by you, and should be treated as if such statements had not been made. But the statements made by these people, if freely and voluntarily made, are competent evidence as against themselves and should be considered by the jury as against the party making the statement. Now, in weighing the statements, you should consider the circumstances under which they were obtained; if they were not voluntarily made, or if they were made under promise of immunity, or inducement of any kind, they should be disregarded; but if they were freely and voluntarily made you should give them such

weight as you think they are entitled to. And in judging them, as I said, you should take into consideration the circumstances under which they were made, the time they were made, and those that are not signed—I believe there was perhaps one that was signed, the captain's—those that were not signed, of course, depend upon the recollection of the testimony of those who testified here as to what the statements were. [207]

Now, so far as the captain of this boat is concerned, Captain O'Hagan, it appeared in evidence from his statement, and from the papers that were found in his possession, that he stipulated, so he claims, that no delivery of liquor should be made within the territorial waters of the United States. But if this liquor was loaded aboard his boat, in pursuance of the conspiracy to transport it and smuggle it into the United States, and he was a party to the conspiracy and knew of it at the time, and participated in it, and with knowledge of that fact brought his boat off San Francisco harbor, it would be no defense to him, under this indictment, that he stipulated that the delivery should not be made within the territorial waters of the United States. He is not on trial for smuggling liquor into the United States; he is not on trial for violating the laws of the United States in that respect, but he is on trial for entering into a conspiracy to do so, and it is immaterial, so far as he is concerned, under this indictment, whether he was to make delivery within the territorial waters of the United States, or out of the territorial waters, if he joined this

conspiracy, if there was a conspiracy, with the purpose, and intent, and knowledge that these liquors were to be smuggled into the United States; so that the stipulation in the manifest, or whatever you may call it, that he was not to make delivery within the territorial waters of the United States, would be no defense if he was a party to this conspiracy. Indeed, it might be, I think, a fact for the jury to consider in determining whether he was a conscious party to the conspiracy, if there was a conspiracy, that before he began the voyage he insisted that there should be such a stipulation in his manifest. If, as a matter of fact, he understood that these goods were to be shipped from Havana to Vancouver, British Columbia, and were not to be smuggled into the United States, it might be inquired why he was so anxious as to require a stipulation that in case he made delivery to be taken into the United States, that such delivery should be made within the territorial waters.

Now, so far as his connection with the matter is concerned, you are to determine from the evidence in this case and say whether you believe, beyond a reasonable doubt, that at the time he accepted the captaincy of this boat and [208] took on board a cargo at Havana, and then navigated the boat, brought the boat up off San Francisco Harbor, he knew that it was the purpose of the parties to smuggle liquor into the United States, and if he did then he is guilty of conspiracy to violate the laws of this country.

Now, so far as the crew is concerned, the question

with reference to the crew will be whether or not they were conscious participants in this alleged conspiracy, if there was a conspiracy; if they were not, then they ought not be convicted; if they shipped on this boat knowing that its purpose was to deliver liquor into the United States in violation of the laws of the United States, and with that knowledge continued on the boat, assisted in its navigation, then they were members of the conspiracy, and ought to be convicted. If, on the other hand, they were acting in good faith, supposed that the boat was going to Vancouver, and not to this country, then they ought not be convicted. They are, of course, mere servants or employees of the boat, and their acts should be considered by this jury keeping that fact in view, and if you do not believe beyond a reasonable doubt that they were conscious participants in the conspiracy, if there was one, then you ought to acquit them. If, on the other hand, you do so believe, then you should find them guilty.

So far as Campanelli and De Maria are concerned, you have heard the evidence with reference to their connection with this matter. It is a question for you to say whether they were conscious participants in this conspiracy, if there was a conspiracy; if they were acting as *co-conspiracy*, assisting in the completion of the scheme, then from the time they became such they would be guilty with the other conspirators. I need not refer to the testimony with reference to them, because you have heard and remember it as well as or better than I do, and it is

for you now to say, under your oaths, whether they or either of them were conscious participants in this conspiracy.

Now, some of the ship's papers, a manifest, and papers of that kind, have been introduced in evidence. Now, these papers are not evidence, and should not be considered by you as evidence tending to connect the defendants other [209] than the captain with the alleged conspiracy; but if it appears from the testimony to your satisfaction, and beyond a reasonable doubt, that the other defendants were parties to this conspiracy or co-conspirators, then the papers might be considered, and properly considered, by the jury in determining the purpose and object of the conspiracy, but not for the purpose of establishing it as against the other defendants.

This covers all the questions of law that occur to me in this case. It will be necessary for you to find a verdict as to each one of these defendants, that is, a verdict of guilty or not guilty. I think you will have no difficulty in keeping them separated. As I said at the beginning, 12 are members of the crew, Captain O'Hagan, De Maria and Campanelli.

It is necessary that your verdict should be unanimous, that is, that you should all agree upon any verdict that you render. After you have retired, you can select one of your members as foreman, who will sign the verdict such as you may render, upon your behalf.

Are there any exceptions from counsel?

Mr. WILLIAMS.—The Defendant De-Maria has no exceptions.

Mr. TULLY.—Just for the purpose of the record, I have not checked up every instruction I submitted to your Honor, I wish to note an exception to the failure to give my instructions 1 to 41 inclusive.

The COURT.—Just one general exception?

Mr. TULLY.—Yes.

The COURT.—Very well. You may have it. You may retire now, gentlemen. [210]

(Thereupon, at 10:50, the jury retired and subsequently returned into court at 4:00 o'clock P. M. returned into Court with a verdict of guilty as to Defendants Campanelli and Captain O'Hagan, and not guilty as to the remainder.) [211]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUISEPPI CAMPINELLI et als.,

Defendants.

VERDICT.

Jose Aberlion	Not Guilty.
J. Bermudez	Not Guilty.
W. J. Blackmore	Not Guilty.
Robert Castagno	Not Guilty.
Guiseppi Campinelli	Guilty.
J. L. Daniel	Not Guilty.
John B. DeMaria	Not Guilty.
Manuel C. Gonzales	Not Guilty.
J. O'Hagan	Guilty, leniency recommended.
Guiseppi Marcardi	Not Guilty.
Cresentino C. A. Massino	Not Guilty.
Manuel Sanchez Novo	Not Guilty.
Ramiro Basterrechea Reguero	Not Guilty.
Antonio D. Rilo.	Not Guilty.
August Rodney.	Not Guilty.

(Signed) BRACE CARTER,
Foreman.

[Endorsed]: Filed Mar. 7, 1925, at 4 o'clock
P. M. Walter B. Maling, Clerk. By Lyle D. Morris,
Deputy Clerk. [212]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GUISEPPI CAMPINELLI et als.,
Defendants.

JUDGMENT ON VERDICT OF GUILTY.

Conv. Viol. Sec. 37, C. C. U. S. (Cons. to Viol. Na-
tional Prohibition Act).

Kenneth C. Gillis, Esq., Assistant United States Attorney, and the defendant with his counsel, came into Court. The defendant was duly informed by the Court of the nature of the indictment on the 12th day of November, 1924, charging him with the crime of violation of Sec. 37 C. C. U. S. (Cons. to Viol. National Prohibition Act), or his arraignment and plea of not guilty; of his trial and the verdict of the jury on the 7th day of March, 1925, to wit:

We, the Jury, find as to the defendants at bar as follows:

Jose Aberlion	Not Guilty.
J. Bermudez	Not Guilty.
W. J. Blackmore	Not Guilty.
Robert Castagno	Not Guilty.
Guiseppi Campinelli	Guilty.

J. L. Daniell	Not Guilty.
John B. DeMaria	Not Guilty.
Ramiro Basterechea Regueno,	Not Guilty.
Antonio D. Rilo,	Not Guilty.
August Rodney,	Not Guilty.
Manuel C. Gonzales,	Not Guilty.
J. O'Hagan	Guilty, leniency recommended.
Giuseppi Mancardi	Not Guilty.
Cresention C. A. Massino	Not Guilty.
Manuel S. Novo	Not Guilty.

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court and the Court having denied a motion for a new trial and a motion in arrest of judgment thereupon the Court rendered its judgment;

THAT, WHEREAS, the said Giuseppi Campanelli, having been duly convicted in this Court of the crime of violating Sec. 37, C. C. U. S. [213] (Conspiracy to violate National Prohibition Act),—

It is THEREFORE ORDERED, ADJUDGED AND DECREED, that the said Giuseppi Campanelli be imprisoned for the period of two years in the United States penitentiary at Leavenworth, Kansas, and pay a fine in the sum of Five Hundred Dollars;

IT IS FURTHER ORDERED, that in default of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged, in due course of law.

Judgment entered this 10th day of March, A. D. 1925.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [214]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GUISEPPI CAMPINELLI et als.,
Defendants.

MOTION FOR ORDER VACATING VERDICT
OF JURY AND GRANTING NEW TRIAL.

The defendant Guiseppi Campinelli hereby moves this Honorable Court for an order vacating the verdict of the jury herein and granting to the said defendant a new trial for the following causes, and each of them, materially affecting the constitutional rights of the said defendant.

I.

Said verdict was contrary to the evidence adduced upon the trial hereof.

II.

Said evidence was insufficient to justify said verdict.

III.

Said verdict was contrary to law.

IV.

That the Court erred in his instructions to the jury, in refusing the defendant's instructions and in deciding questions of law arising during the course of the trial hereof, which errors were duly excepted to.

This motion is made upon the minutes of the Court, and all other records and proceedings in the above-entitled cause. [215]

Dated: San Francisco, California, March 10, 1925.

WILFORD H. TULLY,

Attorney for Defendant Giuseppi Campinelli.

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In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUISEPPI CAMPINELLI et als.,

Defendants.

MOTION IN ARREST OF JUDGMENT.

Now comes Guiseppi Campinelli, one of the defendants in the above-entitled cause, and respectfully moves the Court to arrest and withhold judgment in the above-entitled cause, and that the verdict of conviction of said defendant heretofore given and made in said cause be vacated and set aside and declared to be null and void, and of no force, virtue or effect for each of the following reasons and causes:

I.

It appears upon the face of the record herein that no judgment can be legally entered against the said defendant for the following reasons, to wit:

- (1) The facts stated in the indictment on file herein, and upon which said conviction was and is based, do not constitute a crime or public offense within the jurisdiction of this Court.
- (2) That said indictment does not state facts sufficient to charge the said defendant with any crime or offense against the United States.
- (3) The said indictment does not state facts sufficient to charge the said defendant with having conspired to commit any crime or offense against the United States. [217]
- (4) That the said indictment does not state facts sufficient to charge the said defendant with any crime against the United States, in this,

to wit, that all and singular the matters, things, and acts which the said indictment alleges that said defendant conspired to do are not nor is any of said matters, things or acts a crime under any law or statute of the United States of America.

II.

That this Honorable Court has no jurisdiction to pass judgment upon said defendant by reason of the fact that the said indictment failed to charge said defendant with any crime against the United States; and, further, that this Honorable Court has no jurisdiction to pass judgment upon the said defendant by reason of the fact that the testimony introduced in the trial of said cause showed or tended to show that a crime, if any, had been committed outside of the Northern District of the State of California, and in a foreign jurisdiction

WHEREFORE, by reason of the premises the said defendant prays of this Honorable Court that judgment herein be arrested and withheld, and that the conviction of said defendant be declared null and void.

Dated: March 10, 1925.

WILFORD H. TULLY,
Attorney for the Defendant, Guiseppi Campinelli.

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Complainant,

vs.

J. O'HAGAN et al.,

Defendants.

PRESENTATION OF BILL OF EXCEPTIONS
AND NOTICE THEREOF.

The defendant Guiseppe Companelli hereby presents the foregoing as his proposed bill of exceptions herein, and respectfully asks that the same may be allowed.

WILFORD H. TULLY,

Attorney for Defendant Guiseppe Companelli.

To Sterling Carr, United States Attorney, Northern
District of California, and Kenneth C. Gillis,
Assistant United States Attorney:

Sirs: You will please take notice that the foregoing constitutes and is the proposed bill of exceptions of the defendant Guiseppe Companelli in the above-entitled cause, and that said defendant will ask for the allowance of the same.

WILFORD H. TULLY,

Attorney for the Defendant, Guiseppi Companelli,

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In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Complainant,

vs.

J. O'HAGAN et al.,

Defendants.

STIPULATION FOR SETTLEMENT AND AL-
LOWANCE OF BILL OF EXCEPTIONS
AND ORDER MAKING BILL OF EXCEP-
TIONS PART OF THE RECORDS.

It is hereby stipulated that the foregoing bill
of exceptions is correct, and that the same be
settled and allowed by the Court.

April 2d, 1925.

STERLING CARR,

United States Attorney.

KENNETH C. GILLIS,

Asst. United States Attorney,

WILFORD H. TULLY,

Attorney for Defendant, Guiseppe Campanelli.

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In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,

Complainant,

vs.

J O'HAGAN et al.,

Defendants.

CERTIFICATE OF JUDGE SETTLING BILL
OF EXCEPTIONS.

This bill of exceptions having been duly presented
to the Court and having been amended to cor-
respond with the facts, is now signed and made a
part of the records in this cause.

Dated: March —, 1925.

_____,
Judge.

This bill of exceptions having been duly presented
to the Court and having been amended to cor-
respond with the facts, is now signed and made a
part of the records in this cause.

Dated: Apr. 2, 1925.

A. F. ST. SURE,
Judge.

Receipt of a copy of the within is hereby admitted this 18 day of March, 1925.

STERLING CARR,
United States Attorney.
KENNETH C. GILLIS,
Asst. United States Attorney. [221]

[Endorsed]: Lodged Mar. 18, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. Filed Apr. 2, 1925. Walter P. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [222]

In the Southern Division of the United States District Court for the Northern *Division* of California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,
Complainant,
vs.

J. O'HAGAN et al.,
Defendants.

PETITION FOR WRIT OF ERROR.

Now Comes Guiseppe Campanelli, one of the defendants in the above-entitled action, and brings this his petition for writ of error to the Southern Division of the District Court of the United States for the Northern District of California, and in that behalf your petitioner shows:

On the 10th day of March, 1925, there was made,

rendered and entered in the above-entitled Court and cause, a judgment against your petitioner, wherein and whereby your petitioner, the said Guiseppe Companelli, was adjudged and sentenced to imprisonment for the term of Two Years in the Federal Prison at Leavenworth, Kansas, and fined the sum of Five Hundred Dollars (\$500.00); and your petitioner shows that he is advised by Counsel and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence to the great injury and damage of your petitioner, all of which errors will be more fully made to appear by an examination of the said record, and an examination of the bill of exceptions to be tendered and filed and in the assignment of errors presented herewith; and to that end that the said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for [223] the Ninth Circuit, your petitioner now prays that a writ of error may be issued, directed therefrom to said Southern Division of the District Court of the United States for the Northern District of California, according to law and the practice of the Court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had in the said cause, that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the errors, if any have happened may be duly

corrected, and full and speedy justice done to your petitioner; and that during the pendency of this writ of error, all proceedings in this court be suspended and stayed and that through the pendency of said writ of error the defendant Guiseppi Campanelli be admitted to bail in the sum of Five Thousand Dollars (\$5000.00).

Dated: March 17th, 1925.

WILFORD H. TULLY,
Attorney for Petitioner.

Due service and receipt of a copy of the within petition is admitted his 18th day of March, 1925.

STERLING CARR,
U. S. Attorney.

[Endorsed]: Filed Mar. 18, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[224]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GUISEPPI CAMPINELLI et als.,
Defendants.

ASSIGNMENT OF ERRORS ON BEHALF OF
DEFENDANT GUISEPPI CAMPINELLI.

Guiseppi Campinelli, a defendant in the above-entitled cause, and the plaintiff in error herein, having petitioned for an order from said Court permitting him to procure a writ of error to this Court directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence made and entered in said cause against said Guiseppi Campinelli, the plaintiff in error herein, now makes and files with said petition the following assignment of errors herein upon which he will rely for a reversal of the judgment and sentence upon the said writ, and which errors and each and every one of them are to the great detriment, injury and prejudice of the said Guiseppi Campinelli, and in violation of the rights conferred upon by law; and he says that in the record and proceedings in the above-entitled action, upon the hearing and determination thereof in the Southern Division of the District Court of the United States for the Northern District of California, there is manifest error to which exceptions were duly taken in this, to wit:

I.

The Court erred in overruling the demurrer of the defendant Guiseppi Campinelli to the indictment herein upon [225] the grounds in said demurrer alleged, to wit:

“1.

That each count of the indictment against him

and the matters and things set forth in each of the several counts in the indictment herein are not sufficient in law to compel the defendant to answer to the said indictment in that it does not appear therein nor can it be ascertained therefrom:

a. Of what crime, if any, the defendant herein is thereby charged.

b. What statute of the United States, if any, the defendant herein has violated.

c. Whether the above-named defendant at any time or at all, possessed, in the United States, intoxicating liquor for beverage purposes.

d. Whether the above-named defendant wilfully, unlawfully, feloniously, knowingly and fraudulently imported and brought into the United States and within the jurisdiction of this court certain merchandise contrary to law, as alleged in subdivision 'b' of paragraph 6 of said indictment or whether he assisted in importing or bringing into the United States and within the jurisdiction of this court merchandise contrary to law, as therein alleged.

e. Whether the said motor boat described in subdivision 'a' of paragraph VIII of said indictment actually did transport, deliver, import and bring into the United States, to wit: San Francisco Bay and within the jurisdiction of this court said portion of said cargo of intoxicating liquor.

f. How or in what manner the above-named defendant Guiseppi Campinelli conspired, combined, confederated and agreed together with others to perform the alleged illegal acts.

2.

The facts stated in the indictment do not constitute an offense against the laws of the United States. [226]

3.

That there is no sufficient showing in the said indictment of unlawful means by the above-named defendant Guiseppi Campinelli in the carrying out of the said alleged conspiracy.

4.

That the said indictment, for the reasons hereinabove alleged and specified, is insufficient to enable the said defendant Guiseppi Campinelli to make his defense or to properly inform him of the charges against him or to enable one of common understanding to know and understand the nature of the charges against him.

5.

That said indictment is not sufficient in form or substance to enable the above-named defendant Guiseppi Campinelli to plead any judgment thereon in bar of other prosecution for the same offense."

II.

The Court erred in overruling and denying defendants motion for an order vacating the verdict of the jury and granting defendants a new trial upon the following grounds:

1.

Said verdict was contrary to the evidence adduced upon the trial hereof.

2.

Said evidence was insufficient to justify said verdict.

3.

Said verdict was contrary to law.

4.

That the Court erred in his instructions to the jury, in refusing the defendant's instructions and in [227] deciding questions of law arising during the course of the trial hereof, which errors were duly excepted to.

III.

That the Court erred in overruling defendant's motion in arrest of judgment upon the grounds in said motion stated and assigned as follows:

1.

The facts stated in the indictment on file herein, and upon which said conviction was and is based, do not constitute a crime or public offense within the jurisdiction of this court.

2.

That said indictment does not state facts sufficient to charge the said defendant with any crime or offense against the United States.

3.

That said indictment does not state facts sufficient to charge the said defendant with having conspired to commit any crime or offense against the said United States.

4.

That said indictment does not state facts sufficient to charge the said defendant with any crime against the United States in this, to wit, that all and singular the matters, things and acts which the said indictment alleges that said defend-

ant conspired to do are *nor* nor is any of said matters, things or acts a crime under any law or statute of the United States of America.

That this Honorable Court has no jurisdiction to pass judgment upon said defendant by reason of the fact that the said indictment failed to charge said defendant with any crime against the United States; and, further, that this Honorable Court has no jurisdiction to pass judgment upon the said defendant by reason of the fact that the testimony introduced [228] in the trial of said cause showed or tended to show that a crime, if any, had been committed outside of the Northern District of California, and in a foreign jurisdiction.

IV.

The Court erred in making, giving and rendering judgments against the defendant for the reason that said indictment does not state any crime or any offense against any law of the United States and for the reason taken and assigned by the defendant in his motion in arrest of judgment.

V.

The Court erred in overruling the motion to dismiss the action made on behalf of the defendants upon the ground that the indictment shows upon its face to have been voted by the alleged Grand Jury after the expiration of its term and upon the further ground that it does not appear affirmatively on the face of the indictment that the members of the alleged grand jury were sworn before they proceeded to determine what was pending before them.

VI.

The Court erred in admitting the following testimony over the objections of the defendant therein noted:

“Q. Did you have occasion to visit Pier 16 in this city on April 10th, of 1924? A. I did.

Q. Just where is that located?

A. It is at the end of 16th Street.

Q. This city?

A. It is what is called the 16th Street Pier.

Q. That is in this city? A. Yes.

Q. Did you see the ‘Mae Heyman’ at that time?

A. I did. [229]

Q. What boat was that?

A. The ‘Mae Heyman’; and we afterwards counted the sacks, which numbered 119, that had already been taken out of hold #1.

Q. Out of the hold of the boat onto the pier?

A. From the hold of the boat onto the pier. They were removing them while we were standing behind the pile of lumber.

Q. You made a seizure, then at that time?

A. We seized the boat and the liquor and arrested the men.

Q. How much liquor? A. 1,705 cases.

Mr. WILLIAMS.—The pleading is very general in scope, and the testimony here relates to a boat called the ‘Mae Heyman’ and as this evidence comes in at this particular time we desire at this time to move to strike it out, because it does not appear that it is relevant to this conspiracy in any possible manner.

The COURT.—Of course the Government cannot develop its case at one time.

Mr. WILLIAMS.—I know that, I know your honor will rule against me, but I want to take an exceptions to your Honor's ruling and then I can reserve a motion to strike it out?

The COURT.—Yes, unless the Government connects it up with these defendants.

Mr. WILLIAMS.—I ask for an exception and the privilege of renewing the motion later on.

Mr. TULLY.—May that go as to all the defendants.

The COURT.—Certainly, you all understand the Government cannot develop its case all at one time
[230]

Mr. WILLIAMS.—We renew our motion, if your Honor please.

The COURT.—It will be overruled.

Mr. WILLIAMS.—Exception.

Mr. WILLIAMS.—Did you take any of these defendants into custody at that time?

A. I did not.

The COURT.—What did you say in answer to his question?

A. I did not arrest any of these defendants.

Q. None of these defendants? A. No.

Mr. VINCILIONE.—I ask on behalf of the crew that the evidence of the last witness be stricken out as being hearsay, not being connected with any of the defendants represented here.

The COURT.—As I stated a moment ago, the Government cannot put on its case at one time. The motion will be denied."

VII.

The Court erred in admitting the following testimony over the objections of the defendant therein noted:

“Q. In the spring of 1923 did you become acquainted with a man by the name of Daniel Henderson? A. Yes, I did.

Q. And a man by the name of Guyvan McMillan? A. Yes, I did.

Q. Did you see them quite frequently from that time up to March, 1924?

A. I saw them, yes, most every few days; I had occasion to go into the office in the morning to see what they were doing in regard to the mine; some days I would see Mr. Henderson, but Mr. McMillan was there most of the time; [231] he seemed to be secretary or acting as secretary to Mr. Henderson.

Q. At any of the times that you saw Mr. McMillan, or Mr. Henderson, did you have any conversation with either of them with reference to the smuggling of liquor into this country by either of those individuals.

Mr. WILLIAMS.—Just a moment; I just want to preserve my record on behalf of the defendant DeMaria. I object to the testimony as immaterial, irrelevant and incompetent, hearsay, and there is no foundation laid at this time as to the connection of the defendant DeMaria with this conspiracy.

The COURT.—I will overrule it.

Mr. WILLIAMS.—We note an exception.

Mr. TULLY.—I make the same objection on behalf of the defendant Campinelli.

The COURT.—I do not think it is necessary to take up the time of the Court in making motions of this kind, because, as I said, if this evidence is not connected up it will be withdrawn from the jury.

Mr. TULLY.—May I make the further objection that any declarations made by a co-conspirator are inadmissible at this time because the conspiracy is not proven, and I wish to reserve an exception.

Q. Was there anything in any of the conversation said about the ship 'Ardenza'? A. Yes.

Q. What was that?

A. Well, I originally started with a man named Manning who came in and was to put in a certain amount of money into the mining venture. After about a month and a half he brought in Mr. Henderson and Mr. Stevens, and represented them to me as being English capitalists with a [232] world of money, both multi-millionaires, and wanted to know if I had any objection to their putting some money in, in his interest, that he was not able to carry the whole interest on himself; so I said I had no objection at all. At that time I met Mr. Stevens, who was supposed to be the owner of the 'Ardenza,' which came out in the papers later was his ship.

Q. Anything said about the ownership of the cargo of liquor that was aboard the 'Ardenza'?

A. Mr. Henderson claimed he owned the cargo.

Q. Did he state where the boat 'Ardenza' was at that time? A. Yes.

Q. Where? A. Right outside the Heads, here.

Q. That is, outside of San Francisco?

A. Yes, right off the bay.

Q. Did you ever hear or see anything about a black book that Henderson had?

A. (Mr. TULLY.) We object to this line of questioning, your Honor, and also suggest we cannot see any materiality of it with reference to the particular case here, nothing said that involves any of these other defendants who are on trial. This is bringing in matter we know nothing at all about.

The COURT.—He can answer the question. The objection is overruled.

Mr. TULLY.—Exception.

A. I saw a black book there at one time, and when I wanted him to vacate the office, or give up the other office, he told me that that represented so many thousand cases of whiskey, and he had it there as coal. I said, [233] 'What are you doing with so many tons of coal at the mine, we do not use only a little bit of blacksmithing coal.' And he said, 'That represents a cargo that I have outside, and when I sell that I will have available money to go on?'

Mr. WILLIAMS.—With all due respect to your Honor, we again renew our motion to strike out all of the testimony as being hearsay.

The COURT.—It will be overruled.

Mr. WILLIAMS.—Note an exception.

Q. You saw Mr. McMillan? A. Yes.

Q. I will show you a bill, Mrs. Cohen, to the King Coal Co., and ask you if you recognize that?

A. I do not recognize the bill, but I know that I paid it.

Q. You paid a bill to the King Coal Co.

A. Yes.

Q. On December 5, 1923?

A. Thereabouts, I don't remember the date.

Q. Do you remember about how much it was?

A. No. It was quite a bit.

Q. Over \$300.00?

A. I would not. It was in currency.

Q. It was in currency? A. Yes.

Q. Did you pay the bill yourself? A. Yes.

Q. Who gave you the money to pay it?

A. Mr. McMillan.

Mr. WILLIAMS.—If your Honor please, this transaction, as I understand, relates to a period in December, 1923. While they are not restricted to the exact date of the alleged conspiracy, on or about February, 1924, that is a couple of months or so before. We object to this testimony [234] as anterior to the time of the conspiracy that is alleged to have been entered into.

The COURT.—I suppose the Government is leading up to it.

Mr. GILLIS.—Yes.

The COURT.—Overruled.

Mr. WILLIAMS.—Exception.

Mr. GILLIS.—Who gave you the currency to pay this bill? A. Mr. McMillan.

Q. That is, Guyvan McMillan? A. Yes.

Mr. GILLIS.—That is all.

Mr. WILLIAMS.—I would like to make the same motion with regard to that.

The COURT.—Overruled.

Mr. WILLIAMS.—Exception.”

VIII.

The Court erred in permitting, over the objections of the defendant that it was incompetent, immaterial and irrelevant and had no foundation laid nor conspiracy then proved, the reading to the jury of an alleged statement purporting to have been signed by the defendant John O'Hagen, and made after his arrest and after the completion of the alleged conspiracy, which statement purports to involve the defendant Guiseppi Campanelli.

IX.

The Court erred in admitting, over the objections of the defendant upon the ground that it was incompetent, immaterial and irrelevant and no foundation laid nor conspiracy then proved, and a mere scrap of paper, an alleged part of a manifest of the boat "Guilia," marked "U. S. Exhibit No. 1" taken from the person of the [235] defendant O'Hagan at the time of his arrest, as appears from the following quotation of the testimony:

“Q. I show you one, evidently a part of a manifest, and ask you if that is one of the papers which was taken, part of the papers of the 'Guilia's' Crew? A. Yes, it is.

Mr. CONNOLLY.—I object on the ground that it is not the best evidence; this purports to be a copy of the original document. Furthermore, the document was prepared, evidently, and executed in a foreign country, it is not properly authenticated, so that it can be received in evidence at this time, or at any time throughout the trial. Furthermore, it is a copy, and not the best evidence. I object on those grounds.

Mr. GILLIS.—It was seized or taken from the captain of the 'Guilia,' and is part of the ship's papers.

Mr. TULLY.—May I make the further objection that no foundation has been laid. . . .

The COURT.—It will be received in evidence. (The document was marked 'U. S. Exhibit 1.')

Mr. TULLY.—May we reserve an exception?

The COURT.—Certainly. . . .

Mr. GILLIS.—I desire to call the attention, of the jury to this instrument. 'Anglo Cuban Steamship Co.,' a receipt for 8,418 packages of merchandise, listed as 7,223 packages of whiskey, 400 packages of gin, 40 packages of rum—223 packages of liquors, 200 packages of champagne, 2 case cigars, Vancouver, in transit. Consignees to have the option, weather permitting, to take delivery on the high seas, but in no case, and under no circumstances, is delivery to be made within 20 miles of any territory, and then only on the Pacific Coast, within a radius of a line drawn due west of San Diego and a line due west of Seattle, [236] always at least 20 miles

from such described coast or territories. All island territories within this described area to be taken as the measurement point for such deliveries, if made, in order to conform with a recent treaty made between Great Britain and the U. S. A. Also, should the maximum speed of any vessel taking delivery be more than 15 miles per hour, such excess speed must be added to the delivery distance from the within described area."

IX.

The Court erred in admitting over the objections of the defendant upon the grounds that it was incompetent, immaterial and irrelevant and no foundation laid, an unsigned letter, taken from the person of the defendant O'Hagan, at the time of his arrest, written in the Italian language, marked "U. S. Exhibit 5," and its English translation, a copy of the English translation being as follows:

"Mazatlan, Mexico, August 11, 1924.

"Mr. G. Campanelli,

"17 Columbus Avenue,

"San Francisco, Cal.

"Sir:

"Today towards evening we are ready to leave and I believe that it would be well to send you this letter in order to explain to you better than by means of a telegram the things that have happened since we arrived in Mazatlan.

"We arrived here Monday morning at 3:00 o'clock and were anchored as best we could in the Bay of Mazatlan because here there is no port

or rather there is no wharf. Later on in the morning when the customs officials came on board and inspected the documents, the Captain only was permitted to go ashore in order to despatch the business connected with the boat. In view of the fact that I was not able to go on shore with him, I requested him to send the telegram [237] asking the sum of \$3,000, which at that moment I considered sufficient to pay the expense of the coal which here costs \$29.00 a ton in addition to other loading charges, which loading is done entirely by men who belong to the union and who load only the amount of coal which the union designates, and in any event they will not work for less than 3 Mexican pesos an hour.

“In the meantime the day passed and after dinner I obtained permission to go ashore with the Captain, and the first thing I did was to send a telegram confirming the one sent by Hagen precisely, because having understood that he had sent the telegram in his own name, naturally would not send the money. That being done and believing that you would thus understand, I then went to see the agent and the Consul to make necessary arrangements and then returned on board.

“In the meantime the railroad company, which is the only concern here that has coal, informed us that they would not begin the work of loading the coal on the launch until the money had been paid to their representative here. The Carbon must be taken from the warehouse belonging to them which is located about 9 miles from

where our boat is anchored, which place, like all of the Bay of Mazatlan, is a very bad place at night-time, so much so that all of the ships which arrive here during the night remain in the open sea until daybreak, because of the dangers of the port itself.

“We waited the entire day of the 6th without any news, which we anxiously awaited in order to enable us to leave as soon as possible.

“On the 7th a fire broke out in the ship’s coal bunkers, a fire which was caused by spontaneous combustion on account of some water having entered into the bunkers during the terrible storms which we have here so often. They did the [238] best they could to take about 35 tons of coal from the bunkers, but the gas which was developed from the fire became so strong and unbearable that the men could not breathe and they were obliged to have recourse to the pumps to throw water on the bunkers and use their pumps to pump it out again. But the fire, notwithstanding all this water, did not diminish. On the contrary, removing the coal allowed the air to penetrate better and consequently the coal burned stronger than before and continued to produce even more gas.

“It was finally decided to call the Captain of the Port and Lloyd’s Agent, and also an agent, for their advice. They immediately came on board and advised us to call for help from shore and to do everything needful as soon as possible, otherwise the boilers might blow up and the ship

entirely destroyed. We took their advice and sent for all the men we could get from the shore, who set to work with the members of our crew and worked with all possible speed and energy during the entire night to save the ship. We then took a few hours of rest and on the morning of the 8th the men were called on board from shore as well as the members of our own crew and recommenced their work and continued working with much energy until 5:00 o'clock in the evening, at which hour the men who came on board from the shore returned to the city and our own crew continued to work by themselves.

“On the morning of the 9th the flames began to subside, and by throwing water on the coal towards noon on the 9th the fire was completely under control and the ship’s bunkers then contained very little coal indeed, which was pulled up to the deck in sacks, which sacks we were obliged to buy, and the carbon was heaped together on the deck with the rest of it.

“The result of the fire was that the bottom of the ship’s bunkers, being made of wood, was two-fifths burned [239] away. A lead pipe for carrying water was also burned together with other minor inconveniences, all of which was repaired by the crew, and when the marine insurance agent came on board a second time to inspect the ship, and the damages caused, and the work done, he expressed himself as highly satisfied with everything.

“In the meantime I had received your tele-

gram asking me what was the matter, to which I replied asking \$4,000 instead of \$3,000 on account of the accident which had befallen the ship above described. Afterwards I received notice from the bank that they had an order to pay me \$3,500. I at once went ashore with the Captain and the English Consul, received the money, opened two accounts with the same bank, one in Mexican pesos and one in dollars; I had with me enough money to pay for the carbon; also went to finish burying other articles and afterwards went to see the coal bunkers and promised a small tip to the superintendent if he would handle the job of loading the coal promptly and well.

“On the 10th I received another telegram saying that you had sent me 7 telegrams and asking a reply to each of the seven. I am satisfied I answered every telegram that I received, because as you can easily understand, as I myself understood, that because of an unfortunate combination our various telegrams had crossed each other on their way and for that reason I thought it was a waste of time and money to do any more telegraphing.

“I have dated this letter in advance, dating it tomorrow, because I will not be able to post this letter. However, I expect to write you again when we get to sea on the evening of the 10th, but in this moment everything is going along nicely on board.

“I am endeavoring in every possible way to

work for [240] your interest in everything, and when we arrive I want you to ask anybody on board if in their opinion whatever I have done on board has not been done in perfect good faith, and if I have not done everything on board possible to protect your interests. The insurance agent has assured me that all the expense in connection with fighting the fire will be repaid to us by the insurance company. The work of loading the coal will commence tomorrow, Monday the 11th of August at 7 in the morning, and I firmly believe that by midday on that day all will be loaded and everything all right. The provisions will also arrive during the morning, so I am not in a position to tell you precisely the hour of our departure. We have calculated that in order to arrive at the point designated it will take us eight days, but in case we are favored with good weather or favorable winds we will be able to make the trip in $7\frac{1}{2}$ days, so that leaving Mazatlan Monday night we ought to be at the post designated on the 18th of this month, after dinner, always understanding that no unfortunate accident occurs.

“I beg of you when you come on board, or send on board, to send us the precise hour, or in nautical terms that which they call Greenwich mean time. I make this request because the Captain says the chronometer we have on board is not much good. The Captain also asks that you bury for him a sextant made by Heath, possibly a second

hand one, because the one he has has been injured by the water and is not in good condition.

“After we pay all the expenses, if there is money enough left, I think it will pay us to make another return voyage.

“When you come on board do not forget to bring mail, and if there is not any, if you want to do me a grand favor, send to the postoffice on 7th street and ask if there [241] is any mail for me and if so, bring it along with you.

“I will not tell you now everything that happened to us during the voyage, especially in Cuba and Panama, but I will tell you all about it and other very interesting things when we see each other. I think it is better that I not say any more but I will tell you all about it when I see you.

“I have already advised you that from the ship load some cases have disappeared for several reasons.

“With cordial regards to everybody.”

X.

The Court erred in admitting, over the objection of the defendant noted, an instrument taken from the person of the defendant O'Hagan, at the time of his arrest, marked “U. S. Exhibit 2,” written in a foreign language, which purports to show Guyvan McMillan to be the proprietor or owner of the “Guilia,” as more particularly appears from the following testimony:

“Q. I show you another instrument, Mr. Creighton, and ask you if this is one of the instruments

that was taken from Captain O'Hagan, of the steamer "Guilia"?

The COURT.—Is the Captain one of the defendants in this case?

Mr. GILLIS.—The Captain is, and is present in court.

Mr. McDONALD.—Have you a translation of this?

Mr. GILLIS.—No, I have not. I ask that this be introduced in evidence and marked Government's Exhibit next in order.

Mr. VINCILLONE.—We object on behalf of the crew that it is not binding on them, immaterial, irrelevant and incompetent and hearsay.

Mr. TULLY.—We make the same objection, and not intelligible in its present form, and no foundation has been laid. [242]

The COURT.—Overruled.

Mr. GILLIS.—This document is in a foreign language, but the jury can decipher enough of it to see it is for the boat 'Guilia,' which was formerly the 'Frontiersman,' and the proprietor or owner of it is Guyvan McMillan, of Vancouver, British Columbia."

(The document was marked U. S. Exhibit 2.)

XI.

The Court erred in admitting, over the objection of the defendant, an instrument taken from the person of the defendant O'Hagan at the time of his arrest, marked "U. S. Exhibit 3," which purports to be a manifest of a cargo shipped on board the steamship "Guilia," Captain John O'Hagan,

at Havana, Cuba, for Vancouver, B. C., as more particularly appears from the following quotation from the testimony:

“Mr. GILLIS.—I ask that this be introduced in evidence and marked U. S. Exhibit next in order.

(The document was marked U. S. Exhibit 3.)

Mr. VINCILIONE.—The same objection, if your Honor please.

Mr. TULLY.—The same objection.

The COURT.—Yes. . . .

Mr. GILLIS.—It is a manifest of the steamer ‘Guilia,’ which lists the same number.

Mr. WILLIAMS.—If it is offered because it was gotten in the possession of this particular witness from Captain O’Hagan, all right, but if the United States Attorney is going to characterize this as a manifest, it is immaterial, irrelevant and incompetent, not admissible, because the Courts have repeatedly held that manifests cannot be admitted in evidence unless the authenticity has been proven.

[243]

Mr. GILLIS.—It has written on it ‘Manifest of Cargo shipped on board steamship “Guilia,” Captain John O’Hagan, at Havana, for Vancouver,’ and lists the same liquors that I read in the other instrument.”

XII.

The Court erred in admitting over the objections of the defendant that it was incompetent, irrelevant and immaterial and no foundation laid nor conspiracy then proved, *noral* testimony of H. S. Creighton, concerning the alleged unsigned state-

ment of the defendants Daniels and Rodney, made after their arrest, and after the completion of the alleged conspiracy, which purported to involve the defendant Guiseppi Campinelli, as more particularly appears from the following quotations from the testimony:

“A. This is a statement that Daniell said, he said he was in doubt about the next statement—I don’t know whether this is proper.

Q. Yes.

A. He said that he was in some doubt, but it might have been Louie that brought Joe and Ricardo ashore. When Joe came ashore he wore a .38 pistol and a belt of cartridges strapped around his waist.

Ricardo? Campinelli, and two others came on the ‘Nat’ with the provisions. After the conditions on the ‘Guilia’ became so bad, the crew finally stole all the weapons the captain had and threw them overboard. Daniell was not able to identify either the ‘Mallhat’ or the ‘Quadra’ by name. He referred to them as a five-masted Schooner and another ship. Rodney said that he could identify John De Maria, having been on board the ‘Guilia’ in Ensenada, with Joe Campinelli, and the man whom Joe called his cousin. Joe and Ricardo came to the Farallones on board the ‘Guilia’ and a launch brought them to shore. [244] There is some doubt on the part of Rodney but this may have been Louis who took them ashore. When Joe came ashore he wore a .38 pistol and a belt of cartridges strapped around his waist. Later the

‘Nat’ brought out provisions, consisting of the following provisions, potatoes, canned milk, Armours bacon and corned beef, oranges, apples, flour, celery, tomatoes, cabbages, eggs. Ricardo, Campinelli and two others came on the ‘Nat’ with the provisions. At this time they took no liquor back with them, but soon afterwards they brought some coal, and on that voyage and each other time they took back liquor ashore with them. There was some uncertainty on the part of Rodney but he believes Joe Campinelli came out one time later on the ‘Nat,’ but he did not remain, he went right back ashore with a load of liquor.”

XIII.

The Court erred in admitting, over the objections of the defendant, upon the ground that it was incompetent, irrelevant and *im*, no foundation was laid and no conspiracy then proved, a book taken from the person of the defendant O’Hagan at the time of his arrest which is described as a record of the ship’s transactions and of the members of the crew, which book contained a reference to the defendant Guiseppe Campinelli that was read to the jury by the prosecuting attorney, as more particularly appears from the following quotations from the testimony:

“Mr. GILLIS.—I show you a book and ask you if you recognize that book? A. Yes, I do.

Q. Was that one of the books that was received from Captain O’Hagan similar to other ship’s papers that were taken from him?

A. This book was turned over to me at the same time by Captain O'Hagan. [245]

Mr. GILLIS.—I ask that this book be introduced in evidence and marked Government's exhibit next in order.

Mr. TULLY.—We make the objection that it is immaterial, incompetent and irrelevant, the proper foundation has not been laid, it is hearsay, the handwriting has not been proved, there is nothing here to show its materiality in any sense whatsoever. . . .

The COURT.—It will be admitted then.

Mr. TULLY.—Just a moment before your Honor makes a ruling. That is a mere statement on account of counsel; he has not proved the *identity* of the book.

The COURT.—He got it from the Captain though.

Mr. GILLIS.—Yes. . . .

Mr. GILLIS.—I desire to call the jury's attention to this book; it is an ordinary day-book starting out on April 15, 'Mr. Blackmore engaged as engineer, Mr. Daniell engaged as second engineer, and certain payments made to those individuals. Gerbaudo, Patrick Walsh and other members of the crew mention.' The next page, May 15, shows a list of the Captain, the engineer and second engineer, and certain members of the crew. On the next page, May 15, it shows morning at San Pedro, and the captain and the chief and second engineer and mate and certain members of the crew there; it runs on the 16th, on the 17th, on the 18th, on the

19th, on the 20th, 21st; on the 21st is a note that Mossino changed from a sailor to fireman, and another man from fireman to sailor. Received from Mr. Campinelli \$1000.00. Campinelli left for San Francisco and certain payments made to the crew. On the 22nd are still shown certain payments made to the crew clear on down to the 23rd. On the 23rd again it shows a man engaged as a sailor at \$98.00. Received from McMullen \$2200.00; paid Spreckles for coal \$1700.00 and it runs on, and there are certain days, the 27th down to June 3rd it just [246] gives the date without any reference to what they were doing. Here on June 11th are certain payments to the crew, on the 12th and 13th, 14th, until we get down to the 20th day of June, which is the last item shown, Havana Harbor 7:30 A. M.

Mr. TULLY.—I wish to assign as prejudicial error the reading from that book of a reference to any other defendant than Captain O'Hagan.

The COURT.—You can make the objection."

XIV.

The Court erred in admitting the following testimony over the objections of the defendant therein noted, as more particularly appears from the following quotations from the testimony:

"Mr. GILLIS.—Your position is what, Mr. Grable?

A. Secretary of the King Coal Co.

Q. What is that, Mr. Grable?

A. It is a receipt that we give, or rather take,

from people who take coal from our bunkers at our Oakland plant.

Q. That is a receipt that was given for coal delivered to what steamer?

A. The 'Mae Heyman.'

Q. The date is December 5, 1923? A. Yes.

Q. Do you know of your own knowledge that coal was delivered from your dock to the 'Mae Heyman'?

A. It was

Mr. TULLY.—Just a minute. At this time we will object on the ground it is immaterial, irrelevant and incompetent, I cannot see what the purpose of this is at all.

Mr. TULLY.—It does not tend to prove any of the allegations of the indictment.

The COURT.—It is offered against McMillan and [247] Henderson alone?

Mr. GILLIS.—No, the act of one co-conspirator is the act of all.

The COURT.—You would have to show that these other people were partners in this conspiracy at that time. About when was this? This was in 1923, was it not?

Mr. GILLIS.—This was December 5, 1923.

The COURT.—We have not had any evidence up to this time connecting them with the transaction in December, 1923.

The COURT.—I think it is competent as against McMillan and Henderson.

Mr. TULLY.—May we reserve an exception?

The COURT.—Whether the other people are bound by it would depend upon what the evidence

shows was their connection with the conspiracy, if they were connected with it at all.

Mr. GILLIS.—I ask that it be introduced in evidence and marked Government's exhibit next in order.

(The document was marked U. S. Exhibit 9.)

Q. Do you remember whether you made deliveries of coal to the 'Mae Heyman' after this date?

A. Yes, we did.

Q. How late a date?

A. Into January, the latter part of January.

Q. 1924. A. 1924.

Q. As foreman of the King Coal Co., did you supervise the delivery of any coal to the 'Mae Heyman'? A. Yes.

Mr. TULLY.—We make the same objection.

The COURT.—All right.

Mr. TULLY.—And take an exception. [248]

The COURT.—Yes.

Mr. GILLIS.—Do you know of your own knowledge that the coal was actually in those two months delivered to the 'Mae Heyman.'

A. Yes."

XV.

The Court erred in admitting, over the objection of the defendant, Guiseppi Campinelli, made upon the ground that they were not made freely and voluntarily but were made under promise of immunity, an alleged signed statement of the defendant Guiseppi Campinelli and two alleged oral statements, made after his arrest and after the comple-

tion of the alleged conspiracy, as more particularly appears from the following quotations from the testimony :

“Q. Why did you say to Mr. Campinelli then, ‘We might want to use you as a witness’?”

A. Well, did I say that?

Q. You can refer to the record if you think that my statement is incorrect.

A. It is quite probable that I did make such a statement to him at the time when he said that he wanted to plead guilty.

Q. And you expected him to aid the Government again by bringing in other cancelled checks?

A. Yes.

Q. Then you expected and relied upon Mr. Campanelli to furnish you such information?

A. I sought information from Campinelli, because I believe that he had a lot of available information that he could give, and he seemed very willing to give it on the first occasion. [249]

Q. You say you expected him to act in good faith?

A. Good faith in this, that he had agreed to tell me everything, and to give me all the evidence of his relations with these other men, and this ‘Guilia’ affair, and he had failed to do so, and in that he was failing to show his good faith.

Q. What did you say?

A. I said to Mr. Oftedahl, ‘Now, does this case look real bad’? And he did not answer anything, and I said, ‘Now, this fellow, what shall I do with him? Do you want him to plead guilty, or has he got any line of defense’? Oftedahl said he might

plead guilty and he might refer the matter to the District Attorney and the District Attorney might turn it over to the presiding judge, or arrange leniency in his case, and then I suggested that in that case, probably, I said he would come out with a fine, a nominal sum of money, probably \$300, and Oftedahl said nothing; I thought that was the silent understanding.

Q. You conveyed that information, did you, Mr. Bracini, to Mr. Campinelli?

A. On my own initiative I said to Campinelli, 'The best thing you can do is to plead guilty.'

The COURT.—Was that before or after he made the statement?

A. After he made the statement.

Mr. TULLY.—Had he signed the statement up till that time?

A. No, he refused, on the ground that his attorney advised him not to sign anything.

The following is a copy of the alleged signed statement of the defendant Guiseppi Campinelli:
[250]

November 5, 1924.

Joe Campanelli, when interviewed in the office of the Intelligence Unit, on November 5, 1924, in the presence of Guido Braccini, states

That he does not distinctly recall how he first became acquainted with Mr. Manning of the Colombo Buillion Mines Syndicate, about a year or so ago; that he did purchase several cases of whiskey, possibly fifty, from Mr. Manning, who, as he under-

stands it, was only in San Francisco for two or three weeks;

That Manning made him acquainted with Henderson, with whom he had dealings from time to time, and at Henderson's invitation he visited at the latter's rooms in the Stanford Court Apartments, where he saw Ruth Adele Smith, whose picture he has identified and who Henderson spoke of as 'Pat';

That it was Henderson who made him acquainted with Guyvan McMillan; that he got to be pretty well acquainted with Henderson, who was quite liberal with his funds and paid him sums of money at times amounting from \$50.00 to \$100.00, and on several occasions he purchased quantities of liquor from Henderson; that several months ago Henderson invited him, Campanelli, to go along on a trip to Havana, Cuba, for the purpose of obtaining liquors, and in that connection he learned that Henderson owned a ship called the 'Giulia,' which was being sent to Havana for the purpose of securing a cargo;

That he went along with Henderson on a trip to Havana at the latter's expense, and that Johnny DeMaria joined them on this trip, which was made by train; that he (Campanelli) had no connection whatever with DeMaria and as he understands it DeMaria was making the trip for his own [251] interests. Upon arrival of this party at Miami, Florida, Henderson met with his wife who appeared to be living there at the Granada Apartments, and that the three men after spending about

one week in Miami proceeded to Havana by the boat 'Key West,' where they registered at the Seville Hotel. Campanelli further states that in conversations which were had from time to time with Henderson he came to know that a supply of liquors was being kept in storage at Havana, which belonged to Henderson, and although Johnny DeMaria traveled along on this venture, he does not know to what extent DeMaria was interested financially or otherwise.

He states that he stayed in Havana for fifteen or twenty days waiting the arrival of the steamer 'Giulia,' after which a cargo of liquors was placed on board; that the liquors which were placed aboard the 'Giulia' were removed from warehouses located on what is known as the San Francisco Pier;

That Henderson seemed to have complete charge of the ship as well as her cargo; that Henderson gave him to understand that most of this liquor had been exported from Scotland where Henderson said he owned a distillery; that Johnny De Maria did not remain in Havana until the arrival of the 'Giulia' but stayed in the city, as he recalls it, no longer than a week. Campanelli remained in Havana until the 'Giulia' was loaded and he does not remember the date on which he left but says he proceeded to New Orleans, where he remained for two or three days. The girl, Ruth Adele Smith, *alias* 'Pat' did not show up at Havana while he was there, he says, nor does he know when Henderson left there, but he is quite certain that Hender-

son did not [252] leave on the 'Giulia.' In parting with Henderson he was given instructions to proceed to San Francisco, and Henderson in referring to himself said: 'I will be there before the boat gets there,' or words to that effect:

Campanelli does not remember the date of his return to San Francisco, and asserts that he received no instructions at Havana with regard to making contact of any kind with the 'Giulia' upon her arrival in the vicinity of San Francisco; that about twenty days or more after leaving Havana he (Campanelli) while at his own office in San Francisco at 17 Columbus Avenue, received a telephone call from Henderson, inviting him to the Clift Hotel on Geary Street. On this occasion they simply visited together in the room which was being rented by Mr. Henderson. On that occasion Henderson told him that there were about 8500 cases of liquor aboard the 'Giulia,' and he would like to have Campanelli's assistance in the matter of disposing of the cargo. Henderson offered to pay him \$1.00 a case as a commission for the assistance which he had rendered or might render with regard to the disposal of these liquors, and it was figured out that he would receive at least \$8500.00 on the deal;

Henderson stated that Alioto, a foreman for the Booth Fishing Co. of San Francisco, who had assisted in the unloading of liquors on previous occasions would help in the matter of unloading the 'Giulia' and he (Campanelli) was requested to get in touch with Alioto, which he did. He states

that he informed Alioto of Henderson's purpose to pay him at the rate of \$2.50 a case for every one unloaded from the 'Giulia' and that Alioto agreed to arrange for bringing in liquors from the ship at that rate; he told Alioto that Henderson expected the boat to arrive on a certain fixed date, which he does not recall at this time. [253]

That about one week after his visit with Henderson at the Clift Hotel, Henderson met with him again and they visited together in the office on Columbus Avenue, where he was informed of the fact that the 'Giulia' was down in Ensenada in need of coal and provisions and that he, Henderson, would like to have him go down there to help in any way he could to supply the ship. He says that his cousin, Ricardo Campanelli, had no interest whatever, so far as he knows, in the cargo aboard the 'Giulia', but at his request Ricardo gave him a ride by automobile from San Francisco to San Diego. On the way, however, they met with an accident near the city of Los Angeles, and had to make the remainder of the trip by stage to San Diego. The trip from San Diego to Ensenada was made by automobile.

That while in San Diego he met Johnny DeMaria, but was not informed as to the latter's business down there.

That after arrival at Ensenada, he paid a visit to the 'Giulia,' which was then located in the harbor, and received a sum of money from Captain Hogan, with which he purchased a supply of groceries and other provisions which were transferred to the

ship by means of a launch, which was hired for the purpose. Campanelli insists that he had nothnig whatever to do with purchasing any coal for the 'Giulia' nor with transporting the coal to the ship;

That after these provisions were placed aboard he boarded the ship himself and stayed on her until after arrival, about thirty miles south of the Farillone Islands; that he was seasick and was very anxious to reach shore as soon as possible, and that while the ship was lying off the islands he was permitted to go [254] ashore in the first boat which came alongside; he did not notice that the boat had any name or does he have any means of identifying it except that he might know it if he saw it again. This launch did not remove any liquors from the 'Giulia' so far as he knows, and he and his cousin Ricardo were the only passengers. They landed at Pier 17 or 21 at 5:00 or 6:00 o'clock in the evening.

That upon arrival he went to the office where he met with Henderson, who appeared to be waiting for him. In the course of this visit Henderson made inquiries with regard to the condition of the ship and the cargo and was assured that everything was all right. Henderson told him that the first lot brought ashore from the 'Giulia' consisted of about 300 cases.

XVI.

The Court erred in admitting the following testimony, over the objections of the defendant therein noted, as more fully appears from the following quotations from the testimony:

“Q. Have you with you a bank statement of Mr. G. Campinelli? A. I have.

Q. Will you produce that, please?

A. Yes.

Mr. TULLY.—Objected to on the ground that they are immaterial, irrelevant and incompetent, and no foundation whatever laid, nothing to show this man kept the records, or knows anything about them. It has also to do with an account in the year 1923, long prior to the date fixed in the indictment. [255]

Mr. GILLIS.—It is a complete record of this man’s account at the bank, from July 21, 1923,—to when?

The WITNESS.—From the date it was opened to the date it was closed.

Mr. TULLY.—Absolutely no foundation laid, nothing to show this witness had anything to do with it, with the entries, or the keeping of the account?

The COURT.—This is a bank record?

Mr. GILLIS.—That is a bank record.

The COURT.—It will be admitted.

Mr. TULLY.—Exception.

(The document was marked U. S. Exhibit 10.)

Mr. GILLIS.—Q. Have you made a total of these deposits that are shown from this? A. Yes.

Q. What is that total?

A. I just made a total of the deposits.

Q. A total of the deposits is what?

A. \$157,611.02.

Mr. TULLY.—The same objection and exception.

The COURT.—Yes.”

XVII.

The Court erred in refusing to give the following instruction, requested by the defendant Guiseppi Campinelli, to which an exception was duly and regularly taken:

“You are instructed that if the testimony in this case in its weight and effect be such that two conclusions can be reasonably drawn from it, the one favoring the defendant’s innocence and the other tending to establish their guilt, the law demands that the jury shall adopt the former and find the defendants not guilty. In other words, where, as here, the proof relied upon by the Government is purely circumstantial in its character, the circumstances [256] relied upon must so distinctly indicate the guilt of the accused as to leave no reasonable explanation of them which is consistent with the innocence or to state it another way, the circumstances in the proof must be so strong as to exclude every other reasonable hypotheses except the single one of guilt.”

XVIII.

The Court erred in refusing to give the following instruction, requested by the defendant Guiseppi Campinelli, to which an exception was duly and regularly taken;

“You are instructed that it is incumbent upon the prosecution in this case not only to prove, to a moral certainty and beyond a reasonable doubt, that the conspiracy, confederation, or agreement alleged to have been entered into by the defendants or some of them, actually existed, but that it

antedated or existed prior to the commission of the overt acts alleged in the indictment to have been committed.”

XIX.

The Court erred in refusing to give the following instructions requested by the defendant Guiseppi Campinelli, to which an exception was duly and regularly taken:

“The fact that any defendant has not testified in his own behalf should not be considered or construed in any way against him, and you are not at liberty to indulge in any unfavorable presumption on inference, because he has not testified in his own behalf.”

XX.

The Court erred in refusing to give the following instruction requested by the defendant Guiseppi Campinelli, to which an exception was duly and regularly taken:

“If you believe from the evidence herein that any witness was influenced or induced to become such and to testify in this case, by any promise, express or implied, [257] of immunity from prosecution for any offense or offenses committed by him, then the jury should take such facts into consideration, in determining the weight and credit which ought to be given to testimony thus obtained.”

XXI.

The Court erred in refusing to give the following instruction, requested by the defendant Guiseppi Campinelli, to which an exception was duly and regularly taken:

“If you find that any witness has given false testimony as to any material fact, or matter in the case, then I instruct you that you are entitled to treat the balance of his testimony with distrust, and may disregard the same in its entirety.”

XXII.

The Court erred in refusing to give the following instruction requested by the defendant Guiseppi Campinelli, to which an exception was duly and regularly taken:

“I instruct you that you are the sole judge of whether any alleged statement made by the defendant Guiseppi Campinelli to Alf Oftedahl, or to any other Government agent, was made freely and voluntarily, and made without promise of immunity or other consideration, and made after he was fully advised of his rights, and made after he was warned that anything he might then say could later be used against him.

XXIII.

The Court erred in refusing to give the following instruction requested by the defendant Guiseppi Campinelli to which an exception was duly and regularly taken:

“In determining whether or not the statement of the defendant Guiseppe Campinelli was free and voluntary, you are entitled to take into consideration the fact that he was brought to the Government agents by a Government [258] representative who afterwards promised him that if he would make a second statement the Government agents would see that he received only a fine and that when he re-

fused to sign said second statement he was arrested late at night and placed under high bail although he was already under bond in this case.

XXIV.

The Court erred in refusing to give the following instruction requested by the defendant Guiseppi Campinelli to which an exception was duly and regularly taken:

“If you find from the evidence that any alleged statement made by the defendant Guiseppe Campinelli to Alf Oftedahl, or to any other Government agent, was not made freely and voluntarily’ after the defendant was fully advised of his rights and warned that anything he might then say might later be used against him, and was not made without promise of immunity or other consideration, then I instruct you that you must disregard such statement.”

XXV.

The Court erred in refusing to grant the defendant’s motion for an instructed verdict upon the grounds that evidence was insufficient to sustain the alleged charge.

XXVI.

The Court erred in refusing to strike out immaterial and prejudicial evidence admitted during the trial.

Dated: March 18, 1925.

WILFORD H. TULLY,

Attorney for Defendant, Guiseppi Campinelli.

Service of the within assignment of errors is hereby admitted this 18th day of March, 1925.

STERLING CARR,
United States Attorney. [259]
KENNETH M. GILLIS,
Assistant United States Atty.

[Endorsed]: Filed Mar. 18, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [260]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,828.

UNITED STATES OF AMERICA,
Complainant,

vs.

J. O'HAGAN et al.,
Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS.

The writ of error and supersedeas therein prayed for by the defendant Guiseppe Companelli pending the decision upon the writ of error are hereby allowed, and said defendant is admitted to bail upon the writ of error in the sum of Five Thousand Dollars (\$5000.00).

The bond for costs upon the writ of error is

hereby fixed at the sum of Two Hundred and Fifty Dollars (\$250.00).

Dated: March 18th, 1925.

A. F. ST. SURE,

District Judge of the United States, for the Northern District of California.

[Endorsed]: Filed Mar. 18, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [261]

BOND FOR COSTS.

KNOW ALL MEN BY THESE PRESENTS, That, we, Guiseppe Campanelli, as principal and Luigi Giovannini depositor of Liberty bonds, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Two hundred and fifty (\$250.00) dollars, to be paid to the said United States of America certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of March in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California in a suit depending in said Court, between United States of America and Guiseppe Campanelli, a sentence and judgment was rendered against the said Guiseppe Campanelli and the said

Guiseppe Campanelli having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said Guiseppe Campanelli shall prosecute to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GUISEPPE CAMPANELLI, (Seal.)

LUIGI GIOVANNINI, (Seal.)

Sebastopol, Cal. (Seal)

Acknowledged before me the day and year first above written.

[Seal] FRANCIS KRULL,

U. S. Commissioner, Northern District of California at S. F. [262]

And whereas, under the provisions of section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with Francis Krull, United States Commissioner for the Northern District of California, at San Francisco, the official having authority to take and to approve this penal bond in lieu of surety or sureties certain United States Liberty bonds as follows, viz:

A00894216—2nd Loan—coupons 14 to 49 inc. face vl.....			\$100
B00894217—	Same	Same 100
E0034870—	“	“ 50

And whereas, the above-described United States Liberty bonds are deposited upon the condition and agreement herein given and made that said United States commissioner shall be and he is hereby authorized and empowered to collect or to sell the above described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office. Attached to and made a part of penal bond executed in behalf of Guisepe Campanelli in criminal case No. 15828.

LUIGI GIOVANNINI.

[Endorsed]: Filed Mar. 26, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[263]

BOND TO APPEAR ON WRIT OF ERROR.

United States of America,
Northern District of California,—ss.

KNOW ALL MEN BY THESE PRESENTS, that we, Guiseppi Campanelli, as principal, and Fidelity and Deposit Company of Maryland and ———, as sureties, are held and firmly bound unto the United States of America, in the sum of Two Thousand Five Hundred Dollars, to be paid to the said United States of America, for the payment of

which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents.

SEALED with our seals and dated the 13th day of November, in the year of our Lord, one thousand nine hundred and twenty-four:

THE CONDITION of the above recognizance is such, that, whereas, an Indictment has been found by the United States Grand Jury for the Southern Division of the Northern District of California, and filed on the 12th day of November, A. D. 1924, in the Southern Division of the United States District Court for the Northern District of California, charging the said Guiseppi Campanelli with Section 37 of the Criminal Code of the United States of America unlawfully conspired to violate the National Prohibition Act committed on or about the 1st day of February, A. D. 1924, to wit: at the District and Division aforesaid.

AND WHEREAS, the said Guiseppi Campanelli has been required to give a recognizance, with sureties, in the sum of Two Thousand Five Hundred Dollars for his appearance before said United States District Court whenever required.

NOW, THEREFORE, If the said Guiseppi Campanelli shall personally appear at the Southern Division of the United States District Court for the Northern District of California, First Division, to be holden at the courtroom of said Court in the City and County of San Francisco, on the 17th day of November, A. D.

1924, at ten o'clock in the forenoon of that [264] day, and afterwards whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained, and if convicted shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

G. CAMPANELLI. (Seal.)

Address: 1310 Taylor.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND.

[Seal]

By E. W. LIVINGLEY,
Attorney-in-fact.

Acknowledged before me and approved the day and year first above written.

[Seal]

THOMAS E. HAYDEN,
United States Commissioner, for the Northern
District of California, at S. F.

[Endorsed]: Filed Nov. 13, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[265]

In the Circuit Court of the United States in and for
the Ninth Circuit.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUISEPPE CAMPINELLI et al.,

Defendants.

STIPULATION AND ORDER OMITTING
ORIGINAL EXHIBITS FROM PRINTED
RECORD.

It is hereby stipulated by and between plaintiff and defendants in the above-entitled action, and their respective attorneys, that the exhibits introduced in evidence at and in the trial of the above-entitled action need not be printed in the record on appeal herein. That the original exhibits as introduced in evidence may, by the Clerk of the trial court, be sent to the Clerk of and filed in said Circuit Court, and be used therein for any and all purposes, the same as if said exhibits had been printed in the said record.

Dated: This 30th day of March, 1925.

STERLING CARR,

United States Attorney.

By KENNETH C. GILLIS,

Asst. U. S. Atty.

WILFORD H. TULLY,

Attorney for Defendant.

So ordered.

HUNT,

United States Circuit Judge.

[Endorsed]: Filed Apr. 7, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[266]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON WRIT OF
ERROR.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 266 pages, numbered from 1 to 266, inclusive, contain a full, true and correct transcript of the records and proceedings, in the case of the United States of America, vs. Giuseppe Campinelli et al., No. 15,828, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to the praecipe for transcript of record.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of One Hundred Eleven Dollars and Forty-five Cents, and that the same has been paid to me by the attorney for the plaintiff in error herein.

Annexed hereto are the original writ of error, return to writ of error, and original citation on writ of error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of April, A. D. 1925.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [267]

WRIT OF ERROR.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, To the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Guiseppi Campinelli, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Guiseppi Campinelli, plaintiff in error as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the

San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's office of the United States District Court for the Northern District of California, wherein Guiseppi Campinelli is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California, this 18th day of March, A. D. 1925.

A. F. ST. SURE,

United States District Judge.

Receipt of copy this 18 Mar. 1925, acknowledged.

STERLING CARR,

U. S. Atty.

[Endorsed]: No. 15,828. United States District Court for the Northern District of California. Guiseppi Campinelli, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Mar. 18, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [270]

[Endorsed]: No. 4568. United States Circuit Court of Appeals for the Ninth Circuit. Guiseppi Campanelli, Plaintiff in Error, vs. United States

of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed April 13, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

